



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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024

**Volume 1**

**MINI RECORD**

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

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

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

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

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

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

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

*v011* **II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

- 000001*
1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

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

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

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

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 and the Highland Claimant Trust*

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

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

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DUGABOY INVESTMENT TRUST AND HUNTER MOUNTAIN INVESTMENT TRUST,	§	Adv. Pro. No. 23-03038-sgj
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	§	
	§	
Defendants.	§	

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**APPELLEES' SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P. (“Highland”) and the Highland Claimant Trust (the “Claimant Trust,” and together with Highland, “Appellees”), by and through their undersigned counsel, hereby submit this supplemental designation of items to be included in the record on appeal filed by Dugaboy Investment Trust and Hunter Mountain Investment Trust (together, “Appellants”) from the *Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets* [Docket Nos. 26-27], which was entered by the above named Bankruptcy Court in the above captioned adversary proceeding (the “Adversary Proceeding”) on May 24, 2024.

Appellees respectfully reserve the right to supplement and/or amend the record on appeal designated herein.

**Supplemental Items from the Docket in the Bankruptcy Case**

Appellees designate the following additional items from the docket in the above-captioned bankruptcy case (the “Bankruptcy Case”), in addition to the items previously designated by the Appellants:

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/09/2020	339	Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course
07/16/2020	854	Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020
11/24/2020	1473	Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.

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Vol. 12 003299	01/22/2021	1811-2 (as modified by Docket No. 1875-4)	Claimant Trust Agreement
003317	08/11/2021	2700	Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
003321	04/20/2023	3752	Memorandum of Law in Support of Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.'s Motion to Stay and Motion to Compel Mediation
003361	04/21/2023	3756	Post-Confirmation Report
003376	07/05/2023	3870	Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing
003379	08/02/2023	3897	Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation [Dkt. No. 3752]
003386	11/07/2023	3964	Joint Notice of Mediation Report

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Dated: July 8, 2024

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-and-

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*/s/ Zachery Z. Annable*

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

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

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

**NOTICE OF APPEAL**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s):

Dugaboy Investment Trust

Hunter Mountain Investment Trust

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding:

- Plaintiff
- Defendant
- Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding:

- Debtor
- Creditor
- Trustee
- Other (describe)

## Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Asset [Doc. 26-27]

A true and correct copy of the Order is attached hereto as Exhibit A.

2. State the date on which the judgment, order, or decree was entered: May 24, 2024

## 3. Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

1. *Party/Appellees:* Highland Capital Management, L.P.

Highland Clamant Trust

Attorney:

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2. *Party/Appellants*: Plaintiffs: Dugaboy Investment Trust and Hunter Mountain Investment Trust

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**Dated: June 7, 2024**

**STINSON LLP**

/s/Deborah Deitsch-Perez  
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*Counsel for Dugaboy Investment Trust and the  
Hunter Mountain Investment Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 7, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

# **EXHIBIT A**

## **Notice of Appeal**

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## I. INTRODUCTION

Before the court is a motion to dismiss (“Rule 12(b) Motion”) the above-referenced adversary proceeding (“Adversary Proceeding”).<sup>1</sup> The Rule 12(b) Motion was filed by the two Defendants named in the Adversary Proceeding: Highland Capital Management, L.P. (“Highland” or the “Reorganized Debtor”) and the Highland Claimant Trust (“Claimant Trust”). Highland obtained confirmation of a chapter 11 Plan<sup>2</sup> on February 22, 2021 (which Plan went effective on August 21, 2021). The Claimant Trust was established pursuant to the terms of the Plan and the Claimant Trust Agreement approved pursuant thereto. The Claimant Trust was created for the benefit of “Claimant Trust Beneficiaries,” which was defined under the Plan and the Claimant Trust Agreement to be the holders of allowed general unsecured (Class 8) and subordinated claims (Class 9) against Highland.

The Adversary Proceeding was brought more than two-years post-confirmation by Plaintiffs Hunter Mountain Investment Trust (“HMIT”) and The Dugaboy Investment Trust (“Dugaboy,” and, together with HMIT, the “Plaintiffs”).<sup>3</sup> These two Plaintiffs are controlled by Highland’s co-founder and former President and Chief Executive Officer, James D. Dondero (“Dondero”). The Plaintiffs held equity interests (i.e., limited partnership interests) in Highland. Pursuant to the terms of the Highland Plan, Plaintiffs now hold *unvested contingent interests* in the Claimant Trust—since the limited partnership interests in Highland were cancelled in exchange for unvested contingent interests in the Claimant Trust. These contingent interests will vest if, and

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<sup>1</sup> *The Highland Parties’ Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* (“Motion to Dismiss”), Dkt. No. 13. A memorandum of law in support of the Motion to Dismiss (“MTD Brief”) was filed at Dkt. No. 14.

<sup>2</sup> Capitalized terms not defined in this introduction shall be defined later herein.

<sup>3</sup> *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff’s Interests in the Claimant Trust* (“Complaint”). Dkt. No. 1.

only if, the Claimant Trustee certifies that the Claimant Trust Beneficiaries (i.e., the Class 8 general unsecured claims and Class 9 subordinated claims under the Plan), have been paid in full *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied.

In this Adversary Proceeding, Plaintiffs seek: (1) an order from the bankruptcy court compelling the Reorganized Debtor and the Claimant Trustee to disclose certain information about the assets and liabilities remaining in the Claimant Trust, and, if they are compelled to disclose that information, (2) a declaratory judgment regarding the relative value of those assets and liabilities, and (3) if assets exceed liabilities, a declaratory judgment that HMIT’s and Dugaboy’s unvested contingent interests in the Claimant Trust are likely to vest at some point in the future.

To be clear, it is undisputed that neither HMIT nor Dugaboy are currently Claimant Trust Beneficiaries under the terms of the Plan and Claimant Trust Agreement and that the vesting conditions under the terms of the Plan and Claimant Trust Agreement have not occurred.

Highland and the Claimant Trust filed their Motion to Dismiss, seeking a dismissal, with prejudice, of all three counts of the Complaint. For the following reasons, the court grants the Motion to Dismiss.

## **I. JURISDICTION**

This court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and (O) and 1334.

## **II. BACKGROUND**

### ***A. The Bankruptcy Case and the Plan***

Highland was a Dallas-based investment firm that was co-founded in 1993 by Dondero and Mark Okada. It managed billion-dollar investment portfolios and assets, both directly and indirectly, through numerous affiliates that were owned or controlled by Dondero. On October

16, 2019 (the “Petition Date”), Highland, with Dondero in control<sup>4</sup> and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims, filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019.

Highland, a Delaware limited partnership, had three classes of limited partnership interests (Class A, Class B, and Class C) as of the Petition Date.<sup>5</sup> The Class A interests were held by the Plaintiff Dugaboy, and also Mark Okada’s family trusts, and Strand Advisors, Inc. (the latter of which was an entity wholly owned by Dondero and was also Highland’s only general partner). The Class B and C interests were held by the Plaintiff HMIT.<sup>6</sup>

Very shortly after the Petition Date, the official committee of unsecured creditors (the “Committee”) threatened to seek the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement. Later, the United States Trustee actually moved for the appointment of a chapter 11 trustee. Under the specter of a possible appointment of a trustee, Highland engaged in substantial and lengthy negotiations with the Committee, resulting in a corporate governance settlement approved by this court on January 9, 2020.<sup>7</sup> As a result of this corporate governance settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,<sup>8</sup> although he stayed on with Highland as an unpaid portfolio manager.

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<sup>4</sup> Mark Okada resigned from his role with Highland prior to the Petition Date.

<sup>5</sup> See *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (“Disclosure Statement”) Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

<sup>6</sup> *Id.*

<sup>7</sup> Bankr. Dkt. No. 339.

<sup>8</sup> Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland’s motion to approve the settlement. See *Stipulation in Support of Motion of the Debtor for Approval of*

Three independent directors (“Independent Directors”) were chosen to lead Highland through its chapter 11 case: James P. Seery, Jr. (“Seery”), John S. Dubel, and retired bankruptcy judge Russell Nelms. Seery was appointed Highland’s Chief Executive Officer and Chief Restructuring Officer in July 2020.<sup>9</sup> According to Seery’s testimony at various hearings, it was during subsequent negotiations regarding a plan for Highland that Dondero made a threat to “burn down the place” if Dondero’s own proposed plan terms were not accepted by the company and its creditors. Indeed, soon after Highland negotiated compromises with its major creditors in the case (*e.g.*, the Redeemer Committee of the Crusader Fund; Joshua Terry; Acis; UBS) and began pursuing a plan supported by those creditors, Dondero and entities under his control began engaging in substantial, costly, and time-consuming litigation in the Highland case.<sup>10</sup> As the Fifth Circuit has described the situation, after Dondero’s plans failed, “he and others under his control began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland’s management, threatening employees, and canceling trades between Highland and its clients.”<sup>11</sup>

Highland’s negotiations with the Committee eventually culminated in the filing of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the

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*Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course*, Bankr. Dkt. No. 338.

<sup>9</sup> Bankr. Dkt. No. 854.

<sup>10</sup> As mentioned earlier, after January 2020, Dondero stayed on at Highland as an unpaid portfolio manager. In October 2020, Dondero resigned from all positions with Highland and its affiliates in response to a demand by the Independent Directors made after Dondero’s purported threats and disruptions to the Debtor’s operations.

<sup>11</sup> *NexPoint Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 48 F.4th 419, 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at \*1, \*26 (Bankr. N.D. Tex. June 7, 2021) where this court “[h]eld Dondero in civil contempt, sanctioning him \$100,000, and comparing this case to a ‘nasty divorce.’”).

“Plan”),<sup>12</sup> which was confirmed<sup>13</sup> in February 2021 over the objections of Dondero and Dondero-controlled entities. The Plan, which became effective on August 21, 2021 (“Effective Date”), is essentially an “asset monetization” plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down Highland over a three-year period by monetizing its assets and making distributions to the “Claimant Trust Beneficiaries,” as defined in the Plan and the CTA. General unsecured claims were classified as Class 8, and subordinated claims were classified as Class 9. Under the terms of the Plan, the holders of claims in Classes 8 and 9 received as of the Effective Date, in exchange for their claims, beneficial interests in the Claimant Trust and became “Claimant Trust Beneficiaries.” HMIT’s and Dugaboy’s former limited partnership interests in Highland were classified as Class 10 and Class 11, respectively. Under the terms of the Plan, these interests were cancelled in exchange for *unvested* contingent interests in the Claimant Trust (“Contingent Trust Interests”) that will vest if, and only if, the Claimant Trustee certifies that the Class 8 general unsecured claims and Class 9 subordinated claims have been paid in full, all disputed claims in Classes 8 and 9 have been resolved, *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied.<sup>14</sup> In other

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<sup>12</sup> Bankr. Case Dkt. No. 1808.

<sup>13</sup> The Plan was confirmed on February 22, 2021. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Confirmation Order”). Bankr. Dkt. No. 1943.

<sup>14</sup> *See generally* Plan, Arts. III & IV.

words, HMIT and Dugaboy will become “Claimant Trust Beneficiaries” if, and only if, the vesting conditions occur.

### ***B. Information Rights under the CTA***

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* (“CTA”), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be<sup>15</sup>

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust’s assets to any party, including the Claimant Trust Beneficiaries.<sup>16</sup> The CTA grants limited information rights solely to a “Claimant Oversight Board”<sup>17</sup> and the Claimant Trust Beneficiaries:<sup>18</sup>

The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-

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<sup>15</sup> CTA § 1.1(h). The CTA was expressly incorporated into and is a part of the Plan. *See* Confirmation Order ¶ 25, at 27; Plan Art. IV(J). The final form of the CTA was filed with the court at docket number 1811-2, as modified by docket number 1875-4.

<sup>16</sup> CTA § 3.12(a) (“Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting . . . .”); § 5.2 (“The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets *or to require an accounting.*”) (emphasis added).

<sup>17</sup> “Oversight Board” was defined in the CTA as “the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.”

<sup>18</sup> CTA § 3.12(b).

determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

Nothing in the Plan or the CTA grants any other information rights, and, in fact, the CTA makes clear that the Claimant Trust Beneficiaries do not have any information rights outside of those limited information rights set forth in the CTA,<sup>19</sup> which do not include rights to the granular asset and subsidiary level information that the Plaintiffs are asking for in their Complaint (as later further discussed).

As earlier noted, the Claimant Trust Beneficiaries are defined in the CTA to be only the holders of allowed Class 8 general unsecured claims and allowed Class 9 subordinated claims unless and until the Contingent Trust Interests held by the holders of the former limited partnership interests (classified in Classes 10 and 11 under the Plan) vest, at which point, the Class 10 and Class 11 claimants will become Contingent Trust Beneficiaries.<sup>20</sup> The CTA specifically provides that the holders of Contingent Trust Interests "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA and the Claimant Trustee files with the Bankruptcy Court a certification that all holders of general unsecured claims have been indefeasibly paid in full,

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<sup>19</sup> CTA § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).").

<sup>20</sup> See CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, “all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the ‘GUC Payment Certification’).”<sup>21</sup>

### ***C. The Complaint and Motion to Dismiss***

#### ***1. The Complaint***

On May 10, 2023, HMIT and Dugaboy filed the Complaint in this Adversary Proceeding, asserting one claim for equitable relief and, if the court grants the request for equitable relief, two claims for declaratory relief.

In Count I,<sup>22</sup> entitled “First Claim for Relief - Disclosures of Claimant Trust Assets and Request for Accounting,” Plaintiffs seek an order compelling Highland and the Claimant Trust “to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the [alleged] wall of silence was erected, and all liabilities.”<sup>23</sup> Plaintiffs acknowledge in their Complaint that, under the terms of the Plan and the CTA, they are not entitled to the information they seek: While “[t]he Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and to notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate[,]”<sup>24</sup> . . . ***no like information regarding valuation of the Claimant Trust Assets is available to Plaintiffs as holders of Contingent Claimant Trust Interests . . .***<sup>25</sup> Thus, Plaintiffs seek equitable relief

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<sup>21</sup> See CTA § 5.1(c).

<sup>22</sup> For ease of reference, the court will refer to the Plaintiffs’ “First Claim for Relief,” “Second Claim for Relief,” and “Third Claim for Relief” as Count I, Count II, and Count III, respectively.

<sup>23</sup> Complaint ¶¶ 82-88.

<sup>24</sup> *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

<sup>25</sup> *Id.* ¶ 76.

in Count I – an order compelling the Highland Parties to disclose information that Plaintiffs admit they are not otherwise entitled to under the terms of the Plan and the CTA.

In Count II, entitled “Second Claim for Relief – Declaratory Judgment Regarding Value of Claimant Trust Assets,” Plaintiffs seek a declaratory judgment and “determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations,” “[o]nce Defendants are compelled to provide information about the Claimant Trust assets.”<sup>26</sup>

Finally, in Count III, entitled “Third Claim for Relief – Declaratory Judgment and Determination Regarding Nature of Plaintiffs’ Interests,” the Plaintiffs seek a declaratory judgment and determination, “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”<sup>27</sup> HMIT and Dugaboy, by asking the court for a declaratory judgment that “the conditions are such that their Contingent Claimant Trust Interests *are likely to vest* into Claimant Trust Interests, making them Claimant Trust Beneficiaries”<sup>28</sup> (if the court first grants the equitable relief requested in Count I and the declaratory relief in Count II), admit and acknowledge that they are *not* Claimant Trust Beneficiaries and that their Claimant Trust Interests *have not vested* under the terms of the Plan and CTA. In fact, HMIT and Dugaboy clarify in footnote 6, with respect to Count III, that “[they] do not ask the Court to determine that they are Claimant Trust Beneficiaries or otherwise to convert their contingent interests into non-contingent interests[,]” and they

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<sup>26</sup> *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs’ request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

<sup>27</sup> *Id.* ¶¶ 93-95, at 27. The court notes that Plaintiffs’ request for declaratory relief in Count III is predicated on the court granting the declaratory relief sought in Count II, which (as noted) is, in turn, predicated on the court granting the equitable relief sought in Count I.

<sup>28</sup> *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that “[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement.”<sup>29</sup>

2. The Valuation Motion, Precursor to the Complaint

This is not the first time Plaintiffs have sought a valuation and accounting from the Claimant Trustee. In fact, the Complaint was filed after two prior efforts by the Plaintiffs to seek a valuation and accounting for the purported purpose of having the court determine that the Claimant Trust assets exceeded liabilities such that they were “in the money” and therefore, they argued, their Contingent Trust Interests were likely to vest in the near future. The first time was via a motion<sup>30</sup> that Dugaboy (with the support of HMIT)<sup>31</sup> filed in June 2022, that this court denied<sup>32</sup> on the ground that it was procedurally defective – that the claims for equitable and declaratory relief sought therein must be brought as an adversary proceeding. Specifically, this court held that, in asking the court to determine whether Dugaboy was “in the money” and whether “its status as a holder of a ‘Contingent Trust Interest’ [would] soon spring into the status of a ‘Claimant Trust Beneficiary,’” the Valuation Motion was asking “for the court to determine the extent of Dugaboy’s interest in the property in the Creditor’s Trust,” which is a “proceeding to

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<sup>29</sup> *Id.* ¶ 94 n.6, at 27.

<sup>30</sup> On June 30, 2022, Dugaboy filed a *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy sought “a determination by this Court of the current value of the estate and an accounting of the assets currently held the [sic] Claimant Trust and available for distribution to creditors” and, on September 21, 2022, a *Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy further stated that “the Court should conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and Claimant Trustee of the value of the estate and all assets held by Claimant Trust that are available for distribution to creditors and residual equity holders.” (together, the “Valuation Motion”). In the Valuation Motion, the movants sought a determination of the value of the assets of the Claimant Trust and the entry of “an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now . . . .”

<sup>31</sup> HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

<sup>32</sup> See *Order Denying Motion [DE #3383] and Supplemental Motion [DE #3533] of Dugaboy Investment Trust Due to Procedural Deficiency: Adversary Proceeding is Required* (“Order Denying Valuation Motion”), entered on December 20, 2022. Bankr. Dkt. No. 3645.

determine the validity, priority, or extent of . . . [an] interest in property” under Fed. R. Bankr. P. 7001(2) that must be brought as an adversary proceeding.<sup>33</sup> Additionally, the court held that the movants’ request for the court to make a determination of the current value of the estate and for an accounting of the Claimant Trust assets was a request for equitable relief that was not provided for in the Plan, and that such a request must be brought via an adversary complaint pursuant to Fed. R. Bankr. P. 7001(7).<sup>34</sup> Finally, the court held that the request in the Valuation Motion clearly was requesting a declaratory judgment as to the value of assets, the extent of Dugaboy’s and HMIT’s interests in assets, and ultimately, “a declaration as to Dugaboy’s standing” that should be brought as an adversary proceeding under the terms of Fed. R. Bankr. P. 7001(9) as “a proceeding to obtain declaratory judgment relating to any of the foregoing [types of procedures listed in Rule 7001].”<sup>35</sup> Accordingly, the court denied the Valuation Motion “for procedural deficiency[,] without prejudice to the filing of an adversary proceeding.”<sup>36</sup>

Next, Dugaboy and HMIT filed a motion seeking leave from this court to file the Complaint, pursuant to the “Gatekeeper Provisions” of the court’s prior orders and the Plan (which have been discussed at length in various Highland opinions),<sup>37</sup> but then withdrew the motion for leave (the “Withdrawn Motion for Leave”), after Highland agreed at a status conference held on April 24, 2023 that leave of court was not necessary for the filing of this particular Adversary

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<sup>33</sup> Order Denying Valuation Motion, 4.

<sup>34</sup> *Id.* Fed. R. Bankr. P. 7001(7) states that “a proceeding to obtain an injunction or other equitable relief, except when a . . . chapter 11 plan provides for the relief” is an adversary proceeding governed by Bankruptcy Rules 7001 *et seq.*

<sup>35</sup> *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *E.g., NexPoint Advisors, L.P. v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.)*, 48 F.4<sup>th</sup> 419, 439 (5<sup>th</sup> Cir. 2022) (Fifth Circuit upheld “Gatekeeper Provisions” approved by the bankruptcy court in this case, that required persons to obtain leave of the bankruptcy court before initiating action against certain parties).

Proceeding.<sup>38</sup> Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

3. Meanwhile, HMIT Files Gatekeeper Motion for Leave to File a Different Adversary Proceeding against the Claimant Trustee and Others Regarding Claims Trading

Meanwhile, HMIT filed a separate *Emergency Motion for Leave to File Verified Adversary Proceeding* (“HMIT Motion for Leave Regarding Claims Trading”),<sup>39</sup> which was later supplemented and modified.<sup>40</sup> HMIT’s Motion for Leave Regarding Claims Trading should not be confused with its (and Dugaboy’s) earlier Withdrawn Motion for Leave, just discussed. In the HMIT Motion for Leave Regarding Claims Trading, it sought leave pursuant to the Gatekeeper Provisions to sue Highland, Seery (i.e., the Claimant Trustee), and certain purchasers of large unsecured claims based upon allegations of “insider trading” and breach of fiduciary duty. A hearing was held on the HMIT Motion for Leave Regarding Claims Trading, following which the court took the matter under advisement.

While the matter was pending under advisement, Dondero and certain of his controlled entities (the “Dondero Parties”) filed a *Motion to Stay and to Compel Mediation* (the “Mediation Motion”),<sup>41</sup> which was granted, in part, on August 2, 2023.<sup>42</sup> In compliance with an agreed-upon court order<sup>43</sup> and in furtherance of mediation, Highland filed a *pro forma* adjusted balance sheet

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<sup>38</sup> In confirming that Highland had agreed that a gatekeeper motion would not be necessary “since the adversary would just be seeking a valuation and not monetary or other relief,” Highland’s counsel reported that Highland “does not believe [HMIT] or Dugaboy is entitled to any information whatsoever” and that “[t]hey certainly have no legal right to the information [which is] why they have to pursue . . . an equitable claim.” Transcript of April 24, 2023 Status Conference, 4:7-23. Bankr. Dkt. No. 3765.

<sup>39</sup> Bankr. Dkt. No. 3699 (filed on March 28, 2023).

<sup>40</sup> See Bankr. Dkt. Nos. 3760, 3815, and 3816.

<sup>41</sup> Bankr. Dkt. No. 3757.

<sup>42</sup> Bankr. Dkt. No. 3897.

<sup>43</sup> Bankr. Dkt. No. 3870.

(“Pro Forma Adjusted Balance Sheet”) for the Claimant Trust,<sup>44</sup> which disclosed a May 31, 2023 point-in-time \$152 million in assets (of which only \$37 million was cash or restricted cash) and \$130 million in liabilities, for a total equity value of \$22 million. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been filed in the Bankruptcy Case in certain “Post-Confirmation Reports” as of April 2023.<sup>45</sup> Highland and the Claimant Trustee represent that the Post-Confirmation Reports were “enhanced” and publicly filed to provide interested parties substantially more information than was required, and that these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer.<sup>46</sup> In any event, the Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports are now central to Highland and the Claimant Trustee’s “mootness” argument later discussed herein.

On August 25, 2023, the court issued a 105-page memorandum opinion and order denying HMIT’s Motion for Leave Regarding Claims Trading (“Order Denying Leave to Bring Claims Pertaining to Claims Trading”)<sup>47</sup> on multiple grounds, including on the bases that: (a) HMIT lacked constitutional standing to bring the claims; (b) even if it had constitutional standing, it lacked prudential standing under Delaware trust law to bring the claims; and (c) the proposed claims also were not “colorable” claims that the court, pursuant to its gatekeeping function under the Gatekeeper Provisions, should allow HMIT to bring. The court found, among other things, that HMIT was not a “Claimant Trust Beneficiary” and not a “beneficial owner” of the Claimant Trust. The court further determined that HMIT should not be treated as a “Claimant Trust

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<sup>44</sup> Bankr. Dkt. No. 3872 (filed July 6, 2023).

<sup>45</sup> See Bankr. Dkt. Nos. 3756 and 3757 (“Post-Confirmation Reports”).

<sup>46</sup> MTD Brief ¶ 20, at 10.

<sup>47</sup> Bankr. Dkt. No. 3904.

Beneficiary” after both “considering the current value of the Claimant Trust Assets” and the allegations of wrongful conduct by the Claimant Trustee, as the court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested.” The court noted that “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple,” and it was undisputed that HMIT’s Contingent Trust Interest had not vested yet under the terms of the Plan and the CTA.

On September 8, 2023, HMIT filed a motion to reconsider (“HMIT’s Motion to Reconsider Lack of Standing”)<sup>48</sup> the Order Denying Leave to Bring Claims Pertaining to Claims Trading. HMIT argued that the court should reconsider its ruling because the Pro Forma Adjusted Balance Sheet, filed in July 2023 (after the court took the HMIT Motion for Leave Regarding Claims Trading under advisement, but before the court issued its August 2023 Order Denying Leave to Bring Claims Pertaining to Claims Trading, established that (1) the value of the Claimant Trust assets exceeded liabilities; (2) HMIT was “in the money”; and (3) its unvested Contingent Trust Interest was likely to vest and, therefore, HMIT had both constitutional and prudential standing as a Claimant Trust Beneficiary to bring the proposed claims.

On October 6, 2023, the court entered an order denying reconsideration (“Order Denying HMIT’s Motion to Reconsider Lack of Standing”),<sup>49</sup> finding that the Pro Forma Adjusted Balance sheet did not “demonstrate that HMIT’s contingent interest [wa]s ‘in the money,’” noting that HMIT d[id] not give proper attention to the voluminous supplemental notes” in the Pro Form Adjusted Balance Sheet that are “integral to understanding the numbers therein.”<sup>50</sup> In addition

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<sup>48</sup> Bankr. Dkt. No. 3905.

<sup>49</sup> Bankr. Dkt. No. 3936.

<sup>50</sup> Order Denying HMIT’s Motion to Reconsider Lack of Standing, 3 (citing Notes 5 and 6 of the Balance Sheet, which show that Highland will operate at an “operating loss prospectively,” and that the administrative expenses and legal fees continue to deplete assets, with “significant and widespread litigation result[ing] in massive indemnification obligations, as well as massive, continuing legal fees and expenses”).

this court also found that the Pro Forma Adjusted Balance Sheet did not constitute “newly discovered evidence” because it did not contain information that was materially different from the information disclosed in the Post-Confirmation Reports, filed three months earlier.<sup>51</sup>

4. The Rule 12(b) Motion

As noted earlier, this Adversary Proceeding was briefly stayed pending a court-ordered<sup>52</sup> mediation that ultimately proved to have been unsuccessful.<sup>53</sup> Then, on November 22, 2023, Highland and the Claimant Trustee filed their Rule 12(b) Motion that is now pending before the court.<sup>54</sup>

In their Rule 12(b) Motion, Highland and the Claimant Trustee seek a dismissal of Counts I and III pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure<sup>55</sup> (made applicable herein pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure<sup>56</sup>) for **lack of subject matter jurisdiction**—specifically, Counts I and III based on **mootness**, and Count III based on the additional ground that Plaintiffs seek an **impermissible advisory opinion**. Thus, there is no **justiciable controversy** with respect to either of these counts. In addition to the lack of subject matter arguments, Highland and the Claimant Trustee also seek dismissal of Count III on the basis that the Plaintiffs are **collaterally estopped** from bringing the claim for declaratory relief. Finally,

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<sup>51</sup> *Id.* at 2-3.

<sup>52</sup> See, Bankr. Dkt. No. 3879, which was entered on August 2, 2023, granting, in part, the April 20, 2023 *Motion to Stay and to Compel Mediation* [Bankr. Dkt. No. 3752] filed by Dondero and certain of his affiliates in the main bankruptcy case.

<sup>53</sup> See *Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

<sup>54</sup> See *Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

<sup>55</sup> Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as “Rule \_\_\_\_.”

<sup>56</sup> Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as “Bankruptcy Rule \_\_\_\_.”

the Highland Parties seek dismissal of all three counts pursuant to Rule 12(b)(6) (made applicable herein by Bankruptcy Rule 7012) for *failure to state a claim upon which relief can be granted*.<sup>57</sup>

The court has considered the Rule 12(b) Motion, HMIT's and Dugaboy's response<sup>58</sup> in opposition, and the reply thereto.<sup>59</sup> Oral arguments were heard on February 14, 2024, following which this court took the matter under advisement.<sup>60</sup> Having considered all of this, the undisputed facts set forth in the Complaint, and certain facts of which this court takes judicial notice, and for the following reasons, this court concludes that: (a) it does not lack subject matter jurisdiction over Count I of the Complaint but that HMIT and Dugaboy have failed to state a claim upon which relief can be granted as to Count I, and thus, Count I should be dismissed pursuant to Rule 12(b)(6); (b) that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint should be dismissed for lack of subject matter jurisdiction; and, (c) Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint should be dismissed for lack of subject matter jurisdiction.

### III. CONCLUSIONS OF LAW

#### A. Legal Standards

“When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citation omitted). “Moreover, when a complaint could be dismissed for both lack of jurisdiction and failure to state a claim, the court

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<sup>57</sup> See generally MTD Brief, 11-25.

<sup>58</sup> *The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* (“Response”). Dkt. No. 17.

<sup>59</sup> *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* (“Reply”). Dkt. No. 21.

<sup>60</sup> A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

should dismiss only on the jurisdictional ground under Rule 12(b)(1), without reaching the questions of failure to state a claim under Rule 12(b)(6)—a “practice [that] prevents courts from issuing advisory opinions.” *Crenshaw-Logal v. City of Abilene, Texas*, 436 F. App’x 306 (5<sup>th</sup> Cir. 2011) (cleaned up). “The practice also prevents courts without jurisdiction ‘from prematurely dismissing a case with prejudice.’” *Id.* (quoting *Ramming*, 281 F.3d at 161). Thus, the court will address the Rule 12(b)(1) issues and, then, to the extent the court finds that it has subject matter jurisdiction over any of the claims asserted by the Plaintiffs, the court will address the separate collateral estoppel argument and whether the Plaintiffs have failed to state a claim upon which relief can be granted.

1. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction

As noted, the Defendants argue that the court lacks subject matter jurisdiction over Plaintiffs’ claims asserted in Counts I and III of their Complaint, and, therefore, they must be dismissed pursuant to Rule 12(b)(1). The court notes that, pursuant to Rule 12(h)(3), the court “must dismiss the action” “if [it] determines at any time that it lacks subject matter jurisdiction,” whether the issue is raised by a party or *sua sponte* by the court. This is so because federal courts have a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.” *Abraugh v. Altimus*, 26 F.4th 298, 304 (5<sup>th</sup> Cir. 2022).

Under Article III of the Constitution, a federal court “may only adjudicate actual, ongoing controversies.” *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5<sup>th</sup> Cir. 2023) (citing *Honig v. Doe*, 484 U.S. 305, 317 (1988)). and thus “[w]hether a case or controversy remains live throughout litigation is a jurisdictional matter.” *Id.* (citations omitted). “If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). As noted by the Supreme

Court, “the doctrines of [constitutional standing,] mootness, ripeness, and political question all originate in Article III’s ‘case’ or ‘controversy’ language.” *Id.* at 352 (citations omitted). The justiciability requirement found in Article III forms the basis of the overarching and, at times, overlapping well-settled rule that federal courts are not permitted to issue advisory opinions. *See Su v. F Elephant, Inc. (In re TMT Procurement Corp.)*, No. 21-20146, 2022 WL 38985, at \*2 (5th Cir. Jan. 4, 2022) (“[T]he federal courts established pursuant to Article III of the Constitution do not render advisory opinions,’ and parties must articulate ‘concrete legal issues, presented in actual cases, not abstractions.’”) (quoting *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (quoting *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947))). The Fifth Circuit in *Shemwell*<sup>61</sup> recently expounded on the “interplay among the justiciability doctrines” that are “rooted in the Constitution”:

Our justiciability doctrines – including mootness – are rooted in the Constitution. Under Article III of the Constitution, this court may only adjudicate actual, ongoing controversies. Accordingly, whether a case or controversy remains live throughout litigation is a jurisdictional matter. Reframed in the familiar taxonomy of standing and ripeness, this means that, throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. Or, as the Court has sometimes articulated the interplay among the justiciability doctrines, standing generally assesses whether the [requisite] interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings.

The Supreme Court has interpreted the “cases” and “controversies” language in Article III “to demand that an actual controversy be extant at all stages of review, not merely at the time the complaint is filed,” and, thus, “[i]f an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-161 (2016)

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<sup>61</sup> 63 F.4th at 483.

(cleaned up); *see also* *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006) (“Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).”) (cleaned up). “A case becomes moot, however, only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Campbell-Ewald*, 577 U.S. at 161 (cleaned up). In other words, “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purpose of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” and “no matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (cleaned up).

As alluded to above, ripeness is another justiciability doctrine that originates in Article III’s “case” or “controversy” requirement. *See also* *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967) (“Ripeness is a constitutional prerequisite to the exercise of jurisdiction.”)). “Ripeness ‘separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for judicial review.’” *In re Boyd Veigel, P.C.*, 575 F. App’x 393, 396 (5th Cir. 2014) (quoting *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000) and citing and quoting *United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947) on the doctrine of ripeness). The Fifth Circuit set forth the standard for determining whether a dispute is ripe for adjudication in *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583 (5th Cir. 1987): “A court should dismiss a case for lack of ‘ripeness’ when the case is abstract or hypothetical. . . . A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if

further factual development is required.” *Orix*, 212 F.3d at 895 (quoting *id.* at 586-87) (additional citations omitted).

As noted by the *Orix* court, “[m]any courts have recognized that applying the ripeness doctrine in the declaratory judgment context presents a unique challenge.” When considering a declaratory judgment action (and Plaintiffs here are seeking declaratory relief in Counts II and III), the court must first determine whether the action is justiciable, as the court must do in connection with all claims for relief. Under the federal Declaratory Judgment Act, “any court of the United States” is authorized to “declare the rights and other legal relations” of parties in “a case of actual controversy.” 28 U.S.C. § 2201; Fed. R. Civ. P. 57; *see also Texas Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 534 (5th Cir. 2012). “That controversy must be of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts.” *Id.* (cleaned up).<sup>62</sup> The “unique challenge” that applying the ripeness doctrine to requests for declaratory judgment presents arises from the fact that declaratory judgments are “typically sought before a completed ‘injury-in-fact’ has occurred,” *Orix*, 212 F.3d at 896 (quoting *Foster*, 205 F.3d 851, 857 (5th Cir. 2000)), and, “declaratory actions contemplate an ‘ex ante determination of rights’ that ‘exists in some tension with traditional notions of ripeness.’” *Orix*, 212 F.3d at 896 (quoting *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 692 (1st Cir. 1994)). Notwithstanding this tension that exists in applying the justiciability requirements to declaratory judgment actions, “a declaratory judgment action, like any other action, must be ripe in order to be justiciable.” *Id.* “Thus, courts will not grant declaratory judgments unless the suit is ripe for review.” *Boyd Veigel*, 575 F. App’x at 396 (citing *Foster*, 205 F.3d at 857); *see also Mitchell*, 330 U.S. at 89 (“As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory

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<sup>62</sup> The Fifth Circuit “interprets the § 2201 ‘case or controversy’ requirement to be coterminous with Article III’s ‘case or controversy’ requirement.” *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

opinions. For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field.”) (cleaned up).

In addressing the ripeness doctrine in the declaratory judgment context, the Fifth Circuit has stated that “the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment,” *Boyd Veigel*, 575 F. App’x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)), and that “[w]hether particular facts are sufficiently immediate to establish an actual controversy is a question that must be addressed on a case-by-case basis. *Orix*, 212 F.3d at 896 (citations omitted). “The controversy must be such that it can presently be litigated and decided and not hypothetical, conjectural, conditional or based upon the possibility of a factual situation that may never develop.” *Val-Com Acquisitions Tr. v. Chase Home Fin., L.L.C.*, 434 F. App’x 395, 395-96 (5th Cir. 2011) (cleaned up).

“The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction, so the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5th Cir. 2023) (citing *id.*) (cleaned up) *see also Val-Com*, 434 F. App’x at 396 (“The plaintiffs have the burden of establishing the existence of an actual controversy under the [Declaratory Judgment] Act.”). “Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

2. Rule 12(b)(6) – Failure to State a Claim upon which Relief Can Be Granted

As noted, Highland and the Claimant Trust also argue that all three counts of the Complaint should be dismissed pursuant to Rule 12(b)(6), made applicable herein by Bankruptcy Rule 7012, because Plaintiffs have failed “to state a claim upon which relief can be granted.” To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). “When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679. “In ruling on a Rule 12(b)(6) motion to dismiss, the court cannot look beyond the pleadings and must accept as true those well-pleaded factual allegations in the complaint,” *Hall v. Hodgkins*, 305 F. App’x 224, 227 (5th Cir. 2008) (cleaned up), but it is “not bound to accept as true a legal conclusion couched as factual allegation.” *Randall D. Wolcott MD PA v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (cleaned up). The court “may also consider matters of which it may take judicial notice, and it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Hall v. Hodgkins*, 305 F. App’x at 227 (cleaned up). Dismissal is proper under Rule 12(b)(6), if, after taking the facts alleged in the complaint as true, “it appears certain that the plaintiff cannot prove any set of facts that would entitle it to the relief it seeks.” *Test*

*Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 570 (5th Cir. 2005) (quoting *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995)).

### 3. Collateral Estoppel

Highland and the Claimant Trust also argue that Plaintiffs' claims for declaratory relief asserted in Count III should be dismissed for the additional reason that Plaintiffs are collaterally estopped from bringing the claim. Collateral estoppel, or issue preclusion, is a preclusive doctrine that falls under the umbrella of the res judicata doctrine, which affords preclusive effect to final judgments, orders, and decrees of a federal court, including those of bankruptcy courts. *See In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (quoting *Test Masters*, 428 F.3d at 571 ("The rule of res judicata encompasses two separate but linked preclusive doctrines: (1) true res judicata or claim preclusion and (2) collateral estoppel or issue preclusion.") and citing *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501-02 (2015)). Whereas "claim preclusion, or true res judicata, precludes parties from relitigating claims or causes of action that were or could have been raised in earlier litigation," *id.*, issue preclusion, or collateral estoppel, "prevents the same parties or their privies from relitigating [an issue of fact or law] . . . when: '(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision.'" *Bradberry v. Jefferson Co., Texas*, 732 F.3d 540, 548 (5th Cir. 2013) (quoting *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005)); *see also In re Reddy Ice*, 611 B.R. at 809-10 ("To establish collateral estoppel under federal law one must show: (1) that the issue at stake be identical to the one involved in the prior litigation; (2) that the issue has been actually litigated in the prior litigation; and (3) that the determination of the issue in the prior litigation has been a critical and necessary part of the judgment in that earlier action.") (quoting *Rabo Agrifinance, Inc. v. Terra XXI, Ltd.*, 583 F.3d 348, 353 (5th Cir. 2009)). "By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, these two

doctrines protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.” *In re Reddy Ice*, 611 B.R. at 808 (quoting *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008)). Although as a general rule *res judicata* must be pled as an affirmative defense, Fed. R. Bankr. P. 7008; Fed. R. Civ. P. 8(c)(1), “[i]f, based on the facts pleaded and judicially noticed, a successful affirmative defense appears, then dismissal under Rule 12(b)(6) is proper.” *Hall v. Hodgkins*, 305 F. App’x at 227-28.<sup>63</sup>

## ***B. Application of the Legal Standards Here***

### ***1. Count I – Disclosure and Accounting***

#### **a) Plaintiffs’ equitable claim for disclosure and accounting in Count I cannot be considered “moot”; Defendants’ motion to dismiss Count I pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction must be denied.**

As earlier noted, in Count I of their Complaint, Plaintiffs seek an order compelling Highland and the Claimant Trust “to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the wall of silence was erected, and all liabilities.”<sup>64</sup> Plaintiffs, as holders of Contingent Trust Interests, have neither a contractual right to an accounting of the Claimant Trust assets nor a contractual right to whatever limited information rights under the terms of the Plan and CTA that are afforded to the Claimant Trust Beneficiaries. Plaintiffs acknowledge that they are not “Claimant Trust Beneficiaries.” But they ask the court, without any supporting facts or authority, to treat them as such and to order the Defendants to disclose not just information that

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<sup>63</sup> A court may also raise the issue of *res judicata* or collateral estoppel *sua sponte* in dismissing a claim or cause of action “in the interest of judicial economy where both actions were brought before the same court” or “where all of the relevant facts are contained in the record and all are uncontroverted.” *McIntyre v. Ben E. Keith Co.*, 754 F. App’x 264-65 (5th Cir. 2018) (cleaned up).

<sup>64</sup> Complaint ¶ 88.

Claimant Trust Beneficiaries are entitled to under the Plan and CTA but also information and an accounting that is not otherwise available even to the Claimant Trust Beneficiaries. To be clear, the Plaintiffs are asking this court to disregard the unambiguous and plain terms of the CTA and the Plan and grant the relief sought in Count I based upon equitable considerations.

Ignoring for a moment the Defendants’ Rule 12(b)(6) “failure to state a claim upon which relief may be granted” argument, this court will first focus on Defendants’ argument that Plaintiffs’ claim for equitable relief in Count I is moot and, thus, nonjusticiable and must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

Highland and the Claimant Trust take the position that their filing of the Pro Forma Adjusted Balance Sheet in July 2023, nearly two months after the filing of the Complaint on May 10, 2023, renders moot the Plaintiffs’ request for equitable relief in Count I because the balance sheet provided Plaintiffs (and all parties) with the very information Plaintiffs are asking for in Count I. Thus, “the issue presented in Count I is no longer ‘live.’”<sup>65</sup> Highland and the Claimant Trust add that the Post-Confirmation Reports, filed on the bankruptcy court docket in April 2023, prior to the Complaint being filed, “similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets.” In essence, Defendants argue that the filing of these two items “ha[s] thus eliminated the ‘actual controversy’ at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided.”<sup>66</sup>

Plaintiffs argue that Highland and the Claimant Trust’s mootness argument is exactly backward—that the filing of the Pro Forma Balance Sheet has not eliminated the “actual

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<sup>65</sup> MTD Brief ¶ 25.

<sup>66</sup> MTD Brief ¶¶ 25-26.

controversy” between the parties precisely *because of* the Defendants’ persistent “contentions and arguments that the Balance Sheet is not conclusive [as to the issue of whether Plaintiffs’ Contingent Trust Interests are likely to vest]” – that whether assets exceed liabilities at any one given point in time and whether Plaintiffs appear to be “in the money” is irrelevant to the question of vesting under the terms of the Plan and CTA.<sup>67</sup> Plaintiffs point out that Defendants have argued that Plaintiffs should not rely on the balance sheet, which, again, gives pro forma values as of May 31, 2023, adding that it is not determinative of whether Plaintiffs Contingent Trust Interests will likely vest at any point in the future because, under the terms of the CTA and Plan, Plaintiffs’ unvested, contingent interests in the Claimant Trust will vest if, and only if, the Claimant Trustee files the GUC Payment Certification, certifying that the Class 8 general unsecured claims and Class 9 subordinated claims, the Claimant Trust Beneficiaries under the CTA who are entitled to distributions of the Claimant Trust assets and have other rights under the terms of the CTA, have been indefeasibly paid in full (including as to Class 8, accrued and unpaid post-petition interest), all disputed claims in Classes 8 and 9 have been resolved, *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied. Because it is impossible to know or predict, in particular, what the indemnity obligations and the professional fees will be going forward, it would be just as impossible for the court to make any determination of whether Plaintiffs are “in the money” or whether their contingent interests are likely to vest.

This court cannot conclude that Defendants’ production and filing of the point-in-time Pro Forma Balance Sheet (as of May 31, 2023) and the Post-Confirmation Reports has rendered Plaintiffs’ current request in Count I for information and an accounting moot. A balance sheet and financial disclosures generally are fluid concepts. Relevant information in early 2023 may not

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<sup>67</sup> See Response ¶¶ 17-18.

remain relevant in mid-2024. Thus, Plaintiffs' equitable claim is not mooted by these earlier filed items, and the Count I request is justiciable. Accordingly, Defendants' motion to dismiss Count I under Rule 12(b)(1) for lack of subject matter jurisdiction will be denied. This determination simply means that the court has subject matter jurisdiction here to address Count I. Thus, this court will now consider whether Plaintiffs have stated a claim (in Count I) upon which relief can be granted under Rule 12(b)(6) standards.

**b) Plaintiffs have failed to state a claim upon which relief can be granted in Count I; dismissal of Count I is proper under Rule 12(b)(6).**

As noted above, dismissal under Rule 12(b)(6) is proper if, based upon the facts alleged in the Complaint, taken as true, as well as any judicially noticed facts, "it appears certain that the [Plaintiffs] cannot prove any set of facts that would entitle [them] to the relief [they] seek[ ]." *Test Masters*, 428 F.3d at 570 (quoting *C.C. Port, Ltd.*, 61 F.3d at 289). As noted above, in Count I, Plaintiffs, as holders of unvested contingent interests in the Claimant Trust, seek an order from this court compelling Defendants "to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets," and a detailed accounting of "all transactions that have occurred since [an alleged] wall of silence was erected, and all liabilities." As also noted above, Plaintiffs have acknowledged<sup>68</sup> that their contingent interests in the Claimant Trust have not vested, and Plaintiffs are not Claimant Trust Beneficiaries; thus, under the terms of the CTA, they are not entitled to the information and accounting they seek and do not have even the limited information rights afforded to the Claimant Trust Beneficiaries under the CTA.<sup>69</sup>

The court takes judicial notice of its Order Denying Leave to Bring Claims Pertaining to Claims Trading, in which the court found that HMIT, as a holder of a "Contingent Claimant Trust

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<sup>68</sup> See *supra* p.10.

<sup>69</sup> See *supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

Interest” was not a Claimant Trust Beneficiary, who, under the terms of the CTA and Delaware law, are the “beneficial owners” of the Claimant Trust, and rejected HMIT’s argument that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which, in turn, makes it a present “beneficial owner” under Delaware trust law.<sup>70</sup> The court concluded that, under Delaware Trust law, “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple” and that under the terms of the CTA, the holders of Contingent Trust Interests have no rights under the agreement and will not “be deemed ‘Beneficiaries’” under the CTA “‘unless and until’ they vest in accordance with the Plan and the CTA” and that “the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested based on HMIT’s unsupported allegation of wrongdoing on the part of . . . the Claimant Trustee.”<sup>71</sup>

Now, as before, the court finds and concludes that under the terms of the CTA and Delaware law, Plaintiffs are not beneficiaries or “beneficial owners” of the Claimant Trust who would be entitled to assert rights under the CTA. The court specifically rejects an argument of Plaintiffs that Delaware trust law does not define “beneficiary,” so the court should ignore the terms of the CTA and look to the definition of “beneficiary” under the Restatement (Third) of Trusts, under which they would be considered “beneficiaries” of the Claimant Trust, albeit a contingent beneficiary, who would be entitled under Delaware law to the relief they are requesting. The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act (the “Trust Act,” Chapter 38 of Title 12 of the Delaware Code), and the Trust Act does define “beneficial owner” and uses that term exclusively to refer to the beneficiaries of a Delaware statutory trust. Specifically, under the Trust Act, a statutory trust’s “beneficial owners” are “any

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<sup>70</sup> Order Denying Leave, 77-78.

<sup>71</sup> *Id.*, 78.

owner[s] of a beneficial interest in a statutory trust, the fact of ownership *to be determined and evidenced . . . in conformity to the applicable provisions of the governing instrument of the statutory trust.*<sup>72</sup> Thus, the question of whether Plaintiffs are “beneficiaries” of the Claimant Trust is (as the court concluded in the Order Denying Leave to Bring Claims Pertaining to Claims Trading) determined “by the CTA itself, pure and simple.” And, under the terms of the CTA, “Claimant Trust Beneficiaries” is defined to exclude Plaintiffs, who hold Class 10 and 11 unvested, contingent interests in the Claimant Trust, unless and until the GUC Payment Certification has been filed by the Claimant Trust. Until then, Plaintiffs “shall not have any rights under [the CTA]” and will not “be deemed ‘Beneficiaries’ under [the CTA].”<sup>73</sup>

Plaintiffs ask the court to ignore the plain terms of the CTA and to grant them the relief they have requested on an equitable basis because they “are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.”<sup>74</sup> But, they have not alleged any set of facts that would entitled them to equitable relief either. The court makes the same observation regarding Plaintiffs as it made in its Order Denying Valuation Motion: It appears that Plaintiffs “may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA.” The Plan with the incorporated CTA was confirmed over three years ago now, and neither of the Plaintiffs objected to or appealed the terms of the Plan or CTA that dictate oversight rights.<sup>75</sup> The Fifth Circuit, in September 2022,

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<sup>72</sup> 12 Del. C. § 3801(a) (emphasis added).

<sup>73</sup> See, e.g., Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

<sup>74</sup> Complaint ¶ 83.

<sup>75</sup> HMIT did not file an objection to confirmation of the Plan and did not appeal the Confirmation Order. Dugaboy filed an objection to confirmation and appealed the Confirmation Order, but did not object to the terms of the CTA that limited oversight and information rights to “Claimant Trust Beneficiaries” and specifically excluded the holders of the unvested, contingent interests in the Claimant Trust – such as Plaintiffs – from having any rights under the CTA unless and until their interests vested. The CTA was filed prior to the confirmation hearing and Plaintiffs and other parties could have objected to the terms of the Plan or CTA; they could have complained then about any lack of transparency, oversight, and information rights they believe existed under the terms of the CTA. They did not.

affirmed the Confirmation Order and the terms of the Plan and its incorporated documents, including the CTA, in all respects other than striking certain exculpations. *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419 (5th Cir. 2022). As was the case when the court entered its Order Denying Leave to Bring Claims Pertaining to Claims Trading, “[i]t is undisputed that HMIT’s [and Dugaboy’s] Contingent Trust Interest[s] ha[ve] not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s [and Dugaboy’s] Contingent Trust Interest[s] to be vested.”<sup>76</sup> The court did not have that power back in August 2023 (when it entered the Order Denying Leave to Bring Claims Pertaining to Claims Trading), and the court does not have that power now. Equitable relief is not available where, as here, the parties’ rights and obligations at issue are set forth in the Plan and the CTA. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court’s denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate “cannot be rewritten on equitable grounds,” and noting “[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms.”).

Plaintiffs’ make an argument that an implied covenant of good faith and fair dealing under Delaware law necessarily means that the terms of the CTA that govern the parties’ rights, here, including the information rights and rights to an accounting from the Claimant Trustee that Plaintiffs are seeking in Count I, can be overridden here. The court disagrees. Courts will not use the implied covenant of good faith to override the rights and responsibilities that were bargained for in a trust agreement. *See IKB Int’l S.A. v. Wilmington Trust Co.*, 774 F. App’x 719, 727-28 (3d

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<sup>76</sup> Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

Cir. 2019)(citing *Homan v. Turoczy*, 2005 WL 2000756 (Del. Ch. Aug. 12, 2005)); *see also Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) (“Existing contract terms control such that implied good faith cannot be used to circumvent the parties’ bargain or to create a free-floating duty unattached to the underlying legal document.”) (cleaned up); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1143 (Del. 1990) (holding that the “subjective standards [of good faith and fair dealing] cannot override the literal terms of an agreement.”) (citation omitted). Because the terms of the CTA expressly address the Claimant Trustee’s duties to provide, and parties’ rights to receive, information and an accounting with respect to the Claimant Trust, and those duties do not inure to the benefit of the Plaintiffs, who are not Claimant Trust Beneficiaries, the implied covenant of good faith and fair dealing cannot be used by the Plaintiffs or the court to compel the Claimant Trustee to disclose the information or provide the accounting as requested in Count I.

After considering the facts alleged in the Complaint, taken as true, and the facts and record of which the court has taken judicial notice, the court has determined that Plaintiffs cannot prove any set of facts that would entitle them to the relief they seek. Thus, dismissal of their claim for disclosure of additional information and for an accounting in Count I under Rule 12(b)(6) is proper.

## 2. Count II – Request for Declaratory Relief

In Count II of the Complaint, Plaintiffs seek a declaratory judgment and “determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations,” but this is only if “Defendants are compelled to provide information about the Claimant Trust assets” – in other words, this Count II request is conditioned on the court granting the equitable relief Plaintiffs seek in Count I.<sup>77</sup>

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<sup>77</sup> Complaint ¶¶ 89-92.

Defendants seek dismissal of Count II under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Before the court can address Defendants’ Rule 12(b)(6) motion, the court must first determine whether the claim for declaratory relief in Count II is justiciable such that the court has constitutional jurisdiction – subject matter jurisdiction – to consider and rule on the merits of Plaintiffs’ claim.<sup>78</sup> As noted above,<sup>79</sup> Plaintiffs’ request for declaratory relief in Count II is clearly predicated on the court first granting the relief requested in Count I: ordering the Defendants to disclose information about the Claimant Trust assets and liabilities (beyond what is contained in the Pro Forma Balance Sheet) and to provide to Plaintiffs a detailed accounting of all transactions involving the Claimant Trust. The court has concluded that Plaintiffs are not entitled to the information and accounting they have requested in Count I and that Count I should, thus, be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Because Plaintiffs’ request for declaratory relief in Count II is predicated on the court granting the relief requested in Count I and the court has denied that relief, Count II has now been rendered moot or, at least, not ripe such that it is not justiciable. *See American Precision Ammunition, L.L.C. v. City of Mineral Wells*, 90 F.4th 820, 827 (2024) (where the Fifth Circuit affirmed the district court’s Rule 12(b)(1) dismissal of a claim to reinstate an agreement as moot, where plaintiff’s claim was predicated on a finding by the district court that the agreement was valid and

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<sup>78</sup> Even though Defendants did not raise the issue of subject matter jurisdiction with respect to Count II, the court has an independent duty to assure itself that it has subject matter jurisdiction over a claim or cause of action before it addresses the merits of the claim under Rule 12(b)(6). *See supra* pp. 18-19; *see also Abraugh v. Altimus*, 26 F.4th 298, 304 (2022) (federal courts have a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.”).

<sup>79</sup> *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).<sup>80</sup>

In summary, the court has determined that Defendants’ request for declaratory relief in Count II is not justiciable and, as such, Count II must be dismissed pursuant to Rule 12(h)(3) for lack of subject matter jurisdiction. Anything this court might conclude with respect to Defendants’ motion to dismiss Count II under Rule 12(b)(6) would be an impermissible advisory opinion, so the court will not address Defendants’ arguments that Count II should be dismissed for failure to state a claim upon which relief can be granted.

3. Count III – Request for Declaratory Relief

In Count III of the Complaint, Plaintiffs seek a declaratory judgment and determination, “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”<sup>81</sup>

Defendants argue that the court should dismiss Count III under Rule 12(b)(1) for lack of subject matter jurisdiction on the basis that their request for declaratory relief in Count III is not justiciable because it is moot and otherwise seeks an impermissible advisory opinion. Defendants also argue that, if the court determines that it does have subject matter jurisdiction over Plaintiff’s claim for declaratory relief in Count III, Count III should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, including on the ground that Plaintiffs

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<sup>80</sup> Although Defendants did not argue in their briefing that Count II was not justiciable and so must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, in so many words, Defendants did argue during oral argument that “Count II must . . . be dismissed because it depends on Highland being ‘compelled to provide information about the Claimant Trust assets.’ . . . So if the Court doesn’t compel Highland, the Court has no ability to make the declaration that’s sought.” Feb. 14, 2024 Hrg. Trans., 17:9-13.

<sup>81</sup> *Id.* ¶¶ 93-95, at 27.

are collaterally estopped from asserting the claim for declaratory relief in Count III. The court agrees with Defendants that Count III is not justiciable and that Count III should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, and, thus, the court does not have jurisdiction to issue any pronouncement regarding the merits of Plaintiffs' claim for declaratory relief in Count III (and so it will not address Defendants' motion to dismiss pursuant to Rule 12(b)(6) with respect to Count III).

Similar to Plaintiffs' request for declaratory relief in Count II, Plaintiffs' request for declaratory relief in Count III is a contingent request – this one being predicated on the court first granting the declaratory relief in Count II, which, itself, is predicated on the court granting the equitable relief requested in Count I. Because Counts I and II are being dismissed for failure to state a claim and lack of subject matter jurisdiction, respectively, Plaintiffs' claim for declaratory relief in Count III is, thus, rendered not justiciable. That Counts II and III fall, if Count I falls, is inherent in the way Plaintiffs framed their claims and causes of action in the Complaint. Because Plaintiffs are not entitled to the information and accounting they are requesting in Count I, Plaintiffs' claims for declaratory relief in Counts II and III are rendered moot and/or not ripe and, thus, not justiciable. Plaintiffs' request for a declaratory judgment in Count III is not ripe for adjudication for the additional reason that Plaintiffs are asking the court to issue an opinion based on a set of “hypothetical, conjectural, conditional” facts “or based upon the possibility of a factual situation that may never develop” – the “likely” vesting of Plaintiffs' contingent interests in the Claimant Trust, making them Claimant Trust Beneficiaries. This is something federal courts are not permitted to do, even in the context of a request for declaratory relief (as is the case here with

Counts II and III).<sup>82</sup> The court finds and concludes that Plaintiffs' claim for declaratory relief in Count III is not justiciable and thus must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

This being the case, the court, as it must, declines to address the merits of whether Count III should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted (including based on Defendants' collateral estoppel argument).

Accordingly,

**IT IS ORDERED** that Defendants' Motion to Dismiss Count I of the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), be, and hereby is, **DENIED**;

**IT IS FURTHER ORDERED** that Plaintiffs have failed to state a claim upon which relief can be granted in Count I of the Complaint, and thus Count I of the Complaint is **DISMISSED** pursuant to Rule 12(b)(6);

**IT IS FURTHER ORDERED** that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint is **DISMISSED** for lack of subject matter jurisdiction;

**IT IS FURTHER ORDERED** that Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint is **DISMISSED** for lack of subject matter jurisdiction.

**###End of Memorandum Opinion and Order###**

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<sup>82</sup> See *Val-Com Acquisitions*, 434 F. App'x at 395-96; see also *Boyd Veigel*, 575 F. App'x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)) (where the Fifth Circuit discusses the ripeness doctrine in the context of declaratory judgment actions and states that "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.").



## I. INTRODUCTION

Before the court is a motion to dismiss (“Rule 12(b) Motion”) the above-referenced adversary proceeding (“Adversary Proceeding”).<sup>1</sup> The Rule 12(b) Motion was filed by the two Defendants named in the Adversary Proceeding: Highland Capital Management, L.P. (“Highland” or the “Reorganized Debtor”) and the Highland Claimant Trust (“Claimant Trust”). Highland obtained confirmation of a chapter 11 Plan<sup>2</sup> on February 22, 2021 (which Plan went effective on August 21, 2021). The Claimant Trust was established pursuant to the terms of the Plan and the Claimant Trust Agreement approved pursuant thereto. The Claimant Trust was created for the benefit of “Claimant Trust Beneficiaries,” which was defined under the Plan and the Claimant Trust Agreement to be the holders of allowed general unsecured (Class 8) and subordinated claims (Class 9) against Highland.

The Adversary Proceeding was brought more than two-years post-confirmation by Plaintiffs Hunter Mountain Investment Trust (“HMIT”) and The Dugaboy Investment Trust (“Dugaboy<sub>2</sub>” and, together with HMIT, the “Plaintiffs”).<sup>3</sup> These two Plaintiffs are controlled by Highland’s co-founder and former President and Chief Executive Officer, James D. Dondero (“Dondero”). The Plaintiffs held equity interests (i.e., limited partnership interests) in Highland. Pursuant to the terms of the Highland Plan, Plaintiffs now hold *unvested contingent interests* in the Claimant Trust—since the limited partnership interests in Highland were cancelled in exchange for unvested contingent interests in the Claimant Trust. These contingent interests will vest if, and

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<sup>1</sup> *The Highland Parties’ Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* (“Motion to Dismiss”), Dkt. No. 13. A memorandum of law in support of the Motion to Dismiss (“MTD Brief”) was filed at Dkt. No. 14.

<sup>2</sup> Capitalized terms not defined in this introduction shall be defined later herein.

<sup>3</sup> *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff’s Interests in the Claimant Trust* (“Complaint”). Dkt. No. 1.

only if, the Claimant Trustee certifies that the Claimant Trust Beneficiaries (i.e., the Class 8 general unsecured claims and Class 9 subordinated claims under the Plan), have been paid in full *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied.

In this Adversary Proceeding, Plaintiffs seek: (1) an order from the bankruptcy court compelling the Reorganized Debtor and the Claimant Trustee to disclose certain information about the assets and liabilities remaining in the Claimant Trust, and, if they are compelled to disclose that information, (2) a declaratory judgment regarding the relative value of those assets and liabilities, and (3) if assets exceed liabilities, a declaratory judgment that HMIT’s and Dugaboy’s unvested contingent interests in the Claimant Trust are likely to vest at some point in the future.

To be clear, it is undisputed that neither HMIT nor Dugaboy are currently Claimant Trust Beneficiaries under the terms of the Plan and Claimant Trust Agreement and that the vesting conditions under the terms of the Plan and Claimant Trust Agreement have not occurred.

Highland and the Claimant Trust filed their Motion to Dismiss, seeking a dismissal, with prejudice, of all three counts of the Complaint. For the following reasons, the court grants the Motion to Dismiss.

## **I. JURISDICTION**

This court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and (O) and 1334.

## **II. BACKGROUND**

### ***A. The Bankruptcy Case and the Plan***

Highland was a Dallas-based investment firm that was co-founded in 1993 by Dondero and Mark Okada. It managed billion-dollar investment portfolios and assets, both directly and indirectly, through numerous affiliates that were owned or controlled by Dondero. On October

16, 2019 (the “Petition Date”), Highland, with Dondero in control<sup>4</sup> and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims, filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019.

Highland, a Delaware limited partnership, had three classes of limited partnership interests (Class A, Class B, and Class C) as of the Petition Date.<sup>5</sup> The Class A interests were held by the Plaintiff Dugaboy, and also Mark Okada’s family trusts, and Strand Advisors, Inc. (the latter of which was an entity wholly owned by Dondero and was also Highland’s only general partner). The Class B and C interests were held by the Plaintiff HMIT.<sup>6</sup>

Very shortly after the Petition Date, the official committee of unsecured creditors (the “Committee”) threatened to seek the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement. Later, the United States Trustee actually moved for the appointment of a chapter 11 trustee. Under the specter of a possible appointment of a trustee, Highland engaged in substantial and lengthy negotiations with the Committee, resulting in a corporate governance settlement approved by this court on January 9, 2020.<sup>7</sup> As a result of this corporate governance settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,<sup>8</sup> although he stayed on with Highland as an unpaid portfolio manager.

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<sup>4</sup> Mark Okada resigned from his role with Highland prior to the Petition Date.

<sup>5</sup> See *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (“Disclosure Statement”) Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

<sup>6</sup> *Id.*

<sup>7</sup> Bankr. Dkt. No. 339.

<sup>8</sup> Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland’s motion to approve the settlement. See *Stipulation in Support of Motion of the Debtor for Approval of*

Three independent directors (“Independent Directors”) were chosen to lead Highland through its chapter 11 case: James P. Seery, Jr. (“Seery”), John S. Dubel, and retired bankruptcy judge Russell Nelms. Seery was appointed Highland’s Chief Executive Officer and Chief Restructuring Officer in July 2020.<sup>9</sup> According to Seery’s testimony at various hearings, it was during subsequent negotiations regarding a plan for Highland that Dondero made a threat to “burn down the place” if Dondero’s own proposed plan terms were not accepted by the company and its creditors. Indeed, soon after Highland negotiated compromises with its major creditors in the case (*e.g.*, the Redeemer Committee of the Crusader Fund; Joshua Terry; Acis; UBS) and began pursuing a plan supported by those creditors, Dondero and entities under his control began engaging in substantial, costly, and time-consuming litigation in the Highland case.<sup>10</sup> As the Fifth Circuit has described the situation, after Dondero’s plans failed, “he and others under his control began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland’s management, threatening employees, and canceling trades between Highland and its clients.”<sup>11</sup>

Highland’s negotiations with the Committee eventually culminated in the filing of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the

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*Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course*, Bankr. Dkt. No. 338.

<sup>9</sup> Bankr. Dkt. No. 854.

<sup>10</sup> As mentioned earlier, after January 2020, Dondero stayed on at Highland as an unpaid portfolio manager. In October 2020, Dondero resigned from all positions with Highland and its affiliates in response to a demand by the Independent Directors made after Dondero’s purported threats and disruptions to the Debtor’s operations.

<sup>11</sup> *NexPoint Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 48 F.4th 419, 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at \*1, \*26 (Bankr. N.D. Tex. June 7, 2021) where this court “[h]eld Dondero in civil contempt, sanctioning him \$100,000, and comparing this case to a ‘nasty divorce.’”).

“Plan”),<sup>12</sup> which was confirmed<sup>13</sup> in February 2021 over the objections of Dondero and Dondero-controlled entities. The Plan, which became effective on August 21, 2021 (“Effective Date”), is essentially an “asset monetization” plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down Highland over a three-year period by monetizing its assets and making distributions to the “Claimant Trust Beneficiaries,” as defined in the Plan and the CTA. General unsecured claims were classified as Class 8, and subordinated claims were classified as Class 9. Under the terms of the Plan, the holders of claims in Classes 8 and 9 received as of the Effective Date, in exchange for their claims, beneficial interests in the Claimant Trust and became “Claimant Trust Beneficiaries.” HMIT’s and Dugaboy’s former limited partnership interests in Highland were classified as Class 10 and Class 11, respectively. Under the terms of the Plan, these interests were cancelled in exchange for *unvested* contingent interests in the Claimant Trust (“Contingent Trust Interests”) that will vest if, and only if, the Claimant Trustee certifies that the Class 8 general unsecured claims and Class 9 subordinated claims have been paid in full, all disputed claims in Classes 8 and 9 have been resolved, *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied.<sup>14</sup> In other

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<sup>12</sup> Bankr. Case Dkt. No. 1808.

<sup>13</sup> The Plan was confirmed on February 22, 2021. See *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Confirmation Order”). Bankr. Dkt. No. 1943.

<sup>14</sup> See generally Plan, Arts. III & IV.

words, HMIT and Dugaboy will become “Claimant Trust Beneficiaries” if, and only if, the vesting conditions occur.

### ***B. Information Rights under the CTA***

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* (“CTA”), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be<sup>15</sup>

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust’s assets to any party, including the Claimant Trust Beneficiaries.<sup>16</sup> The CTA grants limited information rights solely to a “Claimant Oversight Board”<sup>17</sup> and the Claimant Trust Beneficiaries:<sup>18</sup>

The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-

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<sup>15</sup> CTA § 1.1(h). The CTA was expressly incorporated into and is a part of the Plan. *See* Confirmation Order ¶ 25, at 27; Plan Art. IV(J). The final form of the CTA was filed with the court at docket number 1811-2, as modified by docket number 1875-4.

<sup>16</sup> CTA § 3.12(a) (“Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting . . . .”); § 5.2 (“The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets *or to require an accounting.*”) (emphasis added).

<sup>17</sup> “Oversight Board” was defined in the CTA as “the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.”

<sup>18</sup> CTA § 3.12(b).

determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

Nothing in the Plan or the CTA grants any other information rights, and, in fact, the CTA makes clear that the Claimant Trust Beneficiaries do not have any information rights outside of those limited information rights set forth in the CTA,<sup>19</sup> which do not include rights to the granular asset and subsidiary level information that the Plaintiffs are asking for in their Complaint (as later further discussed).

As earlier noted, the Claimant Trust Beneficiaries are defined in the CTA to be only the holders of allowed Class 8 general unsecured claims and allowed Class 9 subordinated claims unless and until the Contingent Trust Interests held by the holders of the former limited partnership interests (classified in Classes 10 and 11 under the Plan) vest, at which point, the Class 10 and Class 11 claimants will become Contingent Trust Beneficiaries.<sup>20</sup> The CTA specifically provides that the holders of Contingent Trust Interests "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA and the Claimant Trustee files with the Bankruptcy Court a certification that all holders of general unsecured claims have been indefeasibly paid in full,

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<sup>19</sup> CTA § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).").

<sup>20</sup> See CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, “all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the ‘GUC Payment Certification’).”<sup>21</sup>

### ***C. The Complaint and Motion to Dismiss***

#### ***1. The Complaint***

On May 10, 2023, HMIT and Dugaboy filed the Complaint in this Adversary Proceeding, asserting one claim for equitable relief and, if the court grants the request for equitable relief, two claims for declaratory relief.

In Count I,<sup>22</sup> entitled “First Claim for Relief - Disclosures of Claimant Trust Assets and Request for Accounting,” Plaintiffs seek an order compelling Highland and the Claimant Trust “to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the [alleged] wall of silence was erected, and all liabilities.”<sup>23</sup> Plaintiffs acknowledge in their Complaint that, under the terms of the Plan and the CTA, they are not entitled to the information they seek: While “[t]he Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and to notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate[,]”<sup>24</sup> . . . ***no like information regarding valuation of the Claimant Trust Assets is available to Plaintiffs as holders of Contingent Claimant Trust Interests . . .***<sup>25</sup> Thus, Plaintiffs seek equitable relief

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<sup>21</sup> See CTA § 5.1(c).

<sup>22</sup> For ease of reference, the court will refer to the Plaintiffs’ “First Claim for Relief,” “Second Claim for Relief,” and “Third Claim for Relief” as Count I, Count II, and Count III, respectively.

<sup>23</sup> Complaint ¶¶ 82-88.

<sup>24</sup> *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

<sup>25</sup> *Id.* ¶ 76.

in Count I – an order compelling the Highland Parties to disclose information that Plaintiffs admit they are not otherwise entitled to under the terms of the Plan and the CTA.

In Count II, entitled “Second Claim for Relief – Declaratory Judgment Regarding Value of Claimant Trust Assets,” Plaintiffs seek a declaratory judgment and “determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations,” “[o]nce Defendants are compelled to provide information about the Claimant Trust assets.”<sup>26</sup>

Finally, in Count III, entitled “Third Claim for Relief – Declaratory Judgment and Determination Regarding Nature of Plaintiffs’ Interests,” the Plaintiffs seek a declaratory judgment and determination, “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”<sup>27</sup> HMIT and Dugaboy, by asking the court for a declaratory judgment that “the conditions are such that their Contingent Claimant Trust Interests *are likely to vest* into Claimant Trust Interests, making them Claimant Trust Beneficiaries”<sup>28</sup> (if the court first grants the equitable relief requested in Count I and the declaratory relief in Count II), admit and acknowledge that they are *not* Claimant Trust Beneficiaries and that their Claimant Trust Interests *have not vested* under the terms of the Plan and CTA. In fact, HMIT and Dugaboy clarify in footnote 6, with respect to Count III, that “[they] do not ask the Court to determine that they are Claimant Trust Beneficiaries or otherwise to convert their contingent interests into non-contingent interests[,]” and they

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<sup>26</sup> *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs’ request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

<sup>27</sup> *Id.* ¶¶ 93-95, at 27. The court notes that Plaintiffs’ request for declaratory relief in Count III is predicated on the court granting the declaratory relief sought in Count II, which (as noted) is, in turn, predicated on the court granting the equitable relief sought in Count I.

<sup>28</sup> *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that “[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement.”<sup>29</sup>

2. The Valuation Motion, Precursor to the Complaint

This is not the first time Plaintiffs have sought a valuation and accounting from the Claimant Trustee. In fact, the Complaint was filed after two prior efforts by the Plaintiffs to seek a valuation and accounting for the purported purpose of having the court determine that the Claimant Trust assets exceeded liabilities such that they were “in the money” and therefore, they argued, their Contingent Trust Interests were likely to vest in the near future. The first time was via a motion<sup>30</sup> that Dugaboy (with the support of HMIT)<sup>31</sup> filed in June 2022, that this court denied<sup>32</sup> on the ground that it was procedurally defective – that the claims for equitable and declaratory relief sought therein must be brought as an adversary proceeding. Specifically, this court held that, in asking the court to determine whether Dugaboy was “in the money” and whether “its status as a holder of a ‘Contingent Trust Interest’ [would] soon spring into the status of a ‘Claimant Trust Beneficiary,’” the Valuation Motion was asking “for the court to determine the extent of Dugaboy’s interest in the property in the Creditor’s Trust,” which is a “proceeding to

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<sup>29</sup> *Id.* ¶ 94 n.6, at 27.

<sup>30</sup> On June 30, 2022, Dugaboy filed a *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy sought “a determination by this Court of the current value of the estate and an accounting of the assets currently held the [sic] Claimant Trust and available for distribution to creditors” and, on September 21, 2022, a *Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy further stated that “the Court should conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and Claimant Trustee of the value of the estate and all assets held by Claimant Trust that are available for distribution to creditors and residual equity holders.” (together, the “Valuation Motion”). In the Valuation Motion, the movants sought a determination of the value of the assets of the Claimant Trust and the entry of “an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now . . . .”

<sup>31</sup> HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

<sup>32</sup> See *Order Denying Motion [DE #3383] and Supplemental Motion [DE #3533] of Dugaboy Investment Trust Due to Procedural Deficiency: Adversary Proceeding is Required* (“Order Denying Valuation Motion”), entered on December 20, 2022. Bankr. Dkt. No. 3645.

determine the validity, priority, or extent of . . . [an] interest in property” under Fed. R. Bankr. P. 7001(2) that must be brought as an adversary proceeding.<sup>33</sup> Additionally, the court held that the movants’ request for the court to make a determination of the current value of the estate and for an accounting of the Claimant Trust assets was a request for equitable relief that was not provided for in the Plan, and that such a request must be brought via an adversary complaint pursuant to Fed. R. Bankr. P. 7001(7).<sup>34</sup> Finally, the court held that the request in the Valuation Motion clearly was requesting a declaratory judgment as to the value of assets, the extent of Dugaboy’s and HMIT’s interests in assets, and ultimately, “a declaration as to Dugaboy’s standing” that should be brought as an adversary proceeding under the terms of Fed. R. Bankr. P. 7001(9) as “a proceeding to obtain declaratory judgment relating to any of the foregoing [types of procedures listed in Rule 7001].”<sup>35</sup> Accordingly, the court denied the Valuation Motion “for procedural deficiency[,] without prejudice to the filing of an adversary proceeding.”<sup>36</sup>

Next, Dugaboy and HMIT filed a motion seeking leave from this court to file the Complaint, pursuant to the “Gatekeeper Provisions” of the court’s prior orders and the Plan (which have been discussed at length in various Highland opinions),<sup>37</sup> but then withdrew the motion for leave (the “Withdrawn Motion for Leave”), after Highland agreed at a status conference held on April 24, 2023 that leave of court was not necessary for the filing of this particular Adversary

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<sup>33</sup> Order Denying Valuation Motion, 4.

<sup>34</sup> *Id.* Fed. R. Bankr. P. 7001(7) states that “a proceeding to obtain an injunction or other equitable relief, except when a . . . chapter 11 plan provides for the relief” is an adversary proceeding governed by Bankruptcy Rules 7001 *et seq.*

<sup>35</sup> *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *E.g., NexPoint Advisors, L.P. v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.)*, 48 F.4<sup>th</sup> 419, 439 (5<sup>th</sup> Cir. 2022) (Fifth Circuit upheld “Gatekeeper Provisions” approved by the bankruptcy court in this case, that required persons to obtain leave of the bankruptcy court before initiating action against certain parties).

Proceeding.<sup>38</sup> Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

3. *Meanwhile, HMIT Files Gatekeeper Motion for Leave to File a Different Adversary Proceeding against the Claimant Trustee and Others Regarding Claims Trading*

Meanwhile, HMIT filed a separate *Emergency Motion for Leave to File Verified Adversary Proceeding* (“HMIT Motion for Leave Regarding Claims Trading”),<sup>39</sup> which was later supplemented and modified.<sup>40</sup> HMIT’s Motion for Leave Regarding Claims Trading should not be confused with its (and Dugaboy’s) earlier Withdrawn Motion for Leave, just discussed. In the HMIT Motion for Leave Regarding Claims Trading, it sought leave pursuant to the Gatekeeper Provisions to sue Highland, Seery (i.e., the Claimant Trustee), and certain purchasers of large unsecured claims based upon allegations of “insider trading” and breach of fiduciary duty. A hearing was held on the HMIT Motion for Leave Regarding Claims Trading, following which the court took the matter under advisement.

While the matter was pending under advisement, Dondero and certain of his controlled entities (the “Dondero Parties”) filed a *Motion to Stay and to Compel Mediation* (the “Mediation Motion”),<sup>41</sup> which was granted, in part, on August 2, 2023.<sup>42</sup> In compliance with an agreed-upon court order<sup>43</sup> and in furtherance of mediation, Highland filed a *pro forma* adjusted balance sheet

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<sup>38</sup> In confirming that Highland had agreed that a gatekeeper motion would not be necessary “since the adversary would just be seeking a valuation and not monetary or other relief,” Highland’s counsel reported that Highland “does not believe [HMIT] or Dugaboy is entitled to any information whatsoever” and that “[t]hey certainly have no legal right to the information [which is] why they have to pursue . . . an equitable claim.” Transcript of April 24, 2023 Status Conference, 4:7-23. Bankr. Dkt. No. 3765.

<sup>39</sup> Bankr. Dkt. No. 3699 (filed on March 28, 2023).

<sup>40</sup> See Bankr. Dkt. Nos. 3760, 3815, and 3816.

<sup>41</sup> Bankr. Dkt. No. 3757.

<sup>42</sup> Bankr. Dkt. No. 3897.

<sup>43</sup> Bankr. Dkt. No. 3870.

(“Pro Forma Adjusted Balance Sheet”) for the Claimant Trust,<sup>44</sup> which disclosed a May 31, 2023 point-in-time \$152 million in assets (of which only \$37 million was cash or restricted cash) and \$130 million in liabilities, for a total equity value of \$22 million. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been filed in the Bankruptcy Case in certain “Post-Confirmation Reports” as of April 2023.<sup>45</sup> Highland and the Claimant Trustee represent that the Post-Confirmation Reports were “enhanced” and publicly filed to provide interested parties substantially more information than was required, and that these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer.<sup>46</sup> In any event, the Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports are now central to Highland and the Claimant Trustee’s “mootness” argument later discussed herein.

On August 25, 2023, the court issued a 105-page memorandum opinion and order denying HMIT’s Motion for Leave Regarding Claims Trading (“Order Denying Leave to Bring Claims Pertaining to Claims Trading”)<sup>47</sup> on multiple grounds, including on the bases that: (a) HMIT lacked constitutional standing to bring the claims; (b) even if it had constitutional standing, it lacked prudential standing under Delaware trust law to bring the claims; and (c) the proposed claims also were not “colorable” claims that the court, pursuant to its gatekeeping function under the Gatekeeper Provisions, should allow HMIT to bring. The court found, among other things, that HMIT was not a “Claimant Trust Beneficiary” and not a “beneficial owner” of the Claimant Trust. The court further determined that HMIT should not be treated as a “Claimant Trust

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<sup>44</sup> Bankr. Dkt. No. 3872 (filed July 6, 2023).

<sup>45</sup> See Bankr. Dkt. Nos. 3756 and 3757 (“Post-Confirmation Reports”).

<sup>46</sup> MTD Brief ¶ 20, at 10.

<sup>47</sup> Bankr. Dkt. No. 3904.

Beneficiary” after both “considering the current value of the Claimant Trust Assets” and the allegations of wrongful conduct by the Claimant Trustee, as the court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested.” The court noted that “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple,” and it was undisputed that HMIT’s Contingent Trust Interest had not vested yet under the terms of the Plan and the CTA.

On September 8, 2023, HMIT filed a motion to reconsider (“HMIT’s Motion to Reconsider Lack of Standing”)<sup>48</sup> the Order Denying Leave to Bring Claims Pertaining to Claims Trading. HMIT argued that the court should reconsider its ruling because the Pro Forma Adjusted Balance Sheet, filed in July 2023 (after the court took the HMIT Motion for Leave Regarding Claims Trading under advisement, but before the court issued its August 2023 Order Denying Leave to Bring Claims Pertaining to Claims Trading, established that (1) the value of the Claimant Trust assets exceeded liabilities; (2) HMIT was “in the money”; and (3) its unvested Contingent Trust Interest was likely to vest and, therefore, HMIT had both constitutional and prudential standing as a Claimant Trust Beneficiary to bring the proposed claims.

On October 6, 2023, the court entered an order denying reconsideration (“Order Denying HMIT’s Motion to Reconsider Lack of Standing”),<sup>49</sup> finding that the Pro Forma Adjusted Balance sheet did not “demonstrate that HMIT’s contingent interest [wa]s ‘in the money,’” noting that HMIT d[id] not give proper attention to the voluminous supplemental notes” in the Pro Form Adjusted Balance Sheet that are “integral to understanding the numbers therein.”<sup>50</sup> In addition

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<sup>48</sup> Bankr. Dkt. No. 3905.

<sup>49</sup> Bankr. Dkt. No. 3936.

<sup>50</sup> Order Denying HMIT’s Motion to Reconsider Lack of Standing, 3 (citing Notes 5 and 6 of the Balance Sheet, which show that Highland will operate at an “operating loss prospectively,” and that the administrative expenses and legal fees continue to deplete assets, with “significant and widespread litigation result[ing] in massive indemnification obligations, as well as massive, continuing legal fees and expenses”).

this court also found that the Pro Forma Adjusted Balance Sheet did not constitute “newly discovered evidence” because it did not contain information that was materially different from the information disclosed in the Post-Confirmation Reports, filed three months earlier.<sup>51</sup>

4. *The Rule 12(b) Motion*

As noted earlier, this Adversary Proceeding was briefly stayed pending a court-ordered<sup>52</sup> mediation that ultimately proved to have been unsuccessful.<sup>53</sup> Then, on November 22, 2023, Highland and the Claimant Trustee filed their Rule 12(b) Motion that is now pending before the court.<sup>54</sup>

In their Rule 12(b) Motion, Highland and the Claimant Trustee seek a dismissal of Counts I and III pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure<sup>55</sup> (made applicable herein pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure<sup>56</sup>) for ***lack of subject matter jurisdiction***—specifically, Counts I and III based on ***mootness***, and Count III based on the additional ground that Plaintiffs seek an ***impermissible advisory opinion***. Thus, there is no ***justiciable controversy*** with respect to either of these counts. In addition to the lack of subject matter arguments, Highland and the Claimant Trustee also seek dismissal of Count III on the basis that the Plaintiffs are ***collaterally estopped*** from bringing the claim for declaratory relief. Finally,

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<sup>51</sup> *Id.* at 2-3.

<sup>52</sup> See, Bankr. Dkt. No. 3879, which was entered on August 2, 2023, granting, in part, the April 20, 2023 *Motion to Stay and to Compel Mediation* [Bankr. Dkt. No. 3752] filed by Dondero and certain of his affiliates in the main bankruptcy case.

<sup>53</sup> See *Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

<sup>54</sup> See *Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

<sup>55</sup> Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as “Rule \_\_\_\_.”

<sup>56</sup> Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as “Bankruptcy Rule \_\_\_\_.”

the Highland Parties seek dismissal of all three counts pursuant to Rule 12(b)(6) (made applicable herein by Bankruptcy Rule 7012) for *failure to state a claim upon which relief can be granted*.<sup>57</sup>

The court has considered the Rule 12(b) Motion, HMIT's and Dugaboy's response<sup>58</sup> in opposition, and the reply thereto.<sup>59</sup> Oral arguments were heard on February 14, 2024, following which this court took the matter under advisement.<sup>60</sup> Having considered all of this, the undisputed facts set forth in the Complaint, and certain facts of which this court takes judicial notice, and for the following reasons, this court concludes that: (a) it does not lack subject matter jurisdiction over Count I of the Complaint but that HMIT and Dugaboy have failed to state a claim upon which relief can be granted as to Count I, and thus, Count I should be dismissed pursuant to Rule 12(b)(6); (b) that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint should be dismissed for lack of subject matter jurisdiction; and, (c) Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint should be dismissed for lack of subject matter jurisdiction.

### III. CONCLUSIONS OF LAW

#### A. *Legal Standards*

“When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citation omitted). “Moreover, when a complaint could be dismissed for both lack of jurisdiction and failure to state a claim, the court

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<sup>57</sup> See generally MTD Brief, 11-25.

<sup>58</sup> *The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* (“Response”). Dkt. No. 17.

<sup>59</sup> *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* (“Reply”). Dkt. No. 21.

<sup>60</sup> A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

should dismiss only on the jurisdictional ground under Rule 12(b)(1), without reaching the questions of failure to state a claim under Rule 12(b)(6)—a “practice [that] prevents courts from issuing advisory opinions.” *Crenshaw-Logal v. City of Abilene, Texas*, 436 F. App’x 306 (5<sup>th</sup> Cir. 2011) (cleaned up). “The practice also prevents courts without jurisdiction ‘from prematurely dismissing a case with prejudice.’” *Id.* (quoting *Ramming*, 281 F.3d at 161). Thus, the court will address the Rule 12(b)(1) issues and, then, to the extent the court finds that it has subject matter jurisdiction over any of the claims asserted by the Plaintiffs, the court will address the separate collateral estoppel argument and whether the Plaintiffs have failed to state a claim upon which relief can be granted.

1. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction

As noted, the Defendants argue that the court lacks subject matter jurisdiction over Plaintiffs’ claims asserted in Counts I and III of their Complaint, and, therefore, they must be dismissed pursuant to Rule 12(b)(1). The court notes that, pursuant to Rule 12(h)(3), the court “must dismiss the action” “if [it] determines at any time that it lacks subject matter jurisdiction,” whether the issue is raised by a party or *sua sponte* by the court. This is so because federal courts have a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.” *Abraugh v. Altimus*, 26 F.4th 298, 304 (5<sup>th</sup> Cir. 2022).

Under Article III of the Constitution, a federal court “may only adjudicate actual, ongoing controversies.” *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5<sup>th</sup> Cir. 2023) (citing *Honig v. Doe*, 484 U.S. 305, 317 (1988)). and thus “[w]hether a case or controversy remains live throughout litigation is a jurisdictional matter.” *Id.* (citations omitted). “If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). As noted by the Supreme

Court, “the doctrines of [constitutional standing,] mootness, ripeness, and political question all originate in Article III’s ‘case’ or ‘controversy’ language.” *Id.* at 352 (citations omitted). The justiciability requirement found in Article III forms the basis of the overarching and, at times, overlapping well-settled rule that federal courts are not permitted to issue advisory opinions. *See Su v. F Elephant, Inc. (In re TMT Procurement Corp.)*, No. 21-20146, 2022 WL 38985, at \*2 (5th Cir. Jan. 4, 2022) (“[T]he federal courts established pursuant to Article III of the Constitution do not render advisory opinions,’ and parties must articulate ‘concrete legal issues, presented in actual cases, not abstractions.’”) (quoting *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (quoting *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947))). The Fifth Circuit in *Shemwell*<sup>61</sup> recently expounded on the “interplay among the justiciability doctrines” that are “rooted in the Constitution”:

Our justiciability doctrines – including mootness – are rooted in the Constitution. Under Article III of the Constitution, this court may only adjudicate actual, ongoing controversies. Accordingly, whether a case or controversy remains live throughout litigation is a jurisdictional matter. Reframed in the familiar taxonomy of standing and ripeness, this means that, throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. Or, as the Court has sometimes articulated the interplay among the justiciability doctrines, standing generally assesses whether the [requisite] interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings.

The Supreme Court has interpreted the “cases” and “controversies” language in Article III “to demand that an actual controversy be extant at all stages of review, not merely at the time the complaint is filed,” and, thus, “[i]f an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-161 (2016)

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<sup>61</sup> 63 F.4th at 483.

(cleaned up); *see also* *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006) (“Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).”) (cleaned up). “A case becomes moot, however, only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Campbell-Ewald*, 577 U.S. at 161 (cleaned up). In other words, “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purpose of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” and “no matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (cleaned up).

As alluded to above, ripeness is another justiciability doctrine that originates in Article III’s “case” or “controversy” requirement. *See also* *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967) (“Ripeness is a constitutional prerequisite to the exercise of jurisdiction.”)). “Ripeness ‘separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for judicial review.’” *In re Boyd Veigel, P.C.*, 575 F. App’x 393, 396 (5th Cir. 2014) (quoting *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000) and citing and quoting *United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947) on the doctrine of ripeness). The Fifth Circuit set forth the standard for determining whether a dispute is ripe for adjudication in *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583 (5th Cir. 1987): “A court should dismiss a case for lack of ‘ripeness’ when the case is abstract or hypothetical. . . . A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if

further factual development is required.” *Orix*, 212 F.3d at 895 (quoting *id.* at 586-87) (additional citations omitted).

As noted by the *Orix* court, “[m]any courts have recognized that applying the ripeness doctrine in the declaratory judgment context presents a unique challenge.” When considering a declaratory judgment action (and Plaintiffs here are seeking declaratory relief in Counts II and III), the court must first determine whether the action is justiciable, as the court must do in connection with all claims for relief. Under the federal Declaratory Judgment Act, “any court of the United States” is authorized to “declare the rights and other legal relations” of parties in “a case of actual controversy.” 28 U.S.C. § 2201; Fed. R. Civ. P. 57; *see also Texas Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 534 (5th Cir. 2012). “That controversy must be of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts.” *Id.* (cleaned up).<sup>62</sup> The “unique challenge” that applying the ripeness doctrine to requests for declaratory judgment presents arises from the fact that declaratory judgments are “typically sought before a completed ‘injury-in-fact’ has occurred,” *Orix*, 212 F.3d at 896 (quoting *Foster*, 205 F.3d 851, 857 (5th Cir. 2000)), and, “declaratory actions contemplate an ‘ex ante determination of rights’ that ‘exists in some tension with traditional notions of ripeness.’” *Orix*, 212 F.3d at 896 (quoting *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 692 (1st Cir. 1994)). Notwithstanding this tension that exists in applying the justiciability requirements to declaratory judgment actions, “a declaratory judgment action, like any other action, must be ripe in order to be justiciable.” *Id.* “Thus, courts will not grant declaratory judgments unless the suit is ripe for review.” *Boyd Veigel*, 575 F. App’x at 396 (citing *Foster*, 205 F.3d at 857); *see also Mitchell*, 330 U.S. at 89 (“As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory

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<sup>62</sup> The Fifth Circuit “interprets the § 2201 ‘case or controversy’ requirement to be coterminous with Article III’s ‘case or controversy’ requirement.” *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

opinions. For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field.”) (cleaned up).

In addressing the ripeness doctrine in the declaratory judgment context, the Fifth Circuit has stated that “the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment,” *Boyd Veigel*, 575 F. App’x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)), and that “[w]hether particular facts are sufficiently immediate to establish an actual controversy is a question that must be addressed on a case-by-case basis. *Orix*, 212 F.3d at 896 (citations omitted). “The controversy must be such that it can presently be litigated and decided and not hypothetical, conjectural, conditional or based upon the possibility of a factual situation that may never develop.” *Val-Com Acquisitions Tr. v. Chase Home Fin., L.L.C.*, 434 F. App’x 395, 395-96 (5th Cir. 2011) (cleaned up).

“The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction, so the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5th Cir. 2023) (citing *id.*) (cleaned up) *see also Val-Com*, 434 F. App’x at 396 (“The plaintiffs have the burden of establishing the existence of an actual controversy under the [Declaratory Judgment] Act.”). “Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

2. Rule 12(b)(6) – Failure to State a Claim upon which Relief Can Be Granted

As noted, Highland and the Claimant Trust also argue that all three counts of the Complaint should be dismissed pursuant to Rule 12(b)(6), made applicable herein by Bankruptcy Rule 7012, because Plaintiffs have failed “to state a claim upon which relief can be granted.” To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). “When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679. “In ruling on a Rule 12(b)(6) motion to dismiss, the court cannot look beyond the pleadings and must accept as true those well-pleaded factual allegations in the complaint,” *Hall v. Hodgkins*, 305 F. App’x 224, 227 (5th Cir. 2008) (cleaned up), but it is “not bound to accept as true a legal conclusion couched as factual allegation.” *Randall D. Wolcott MD PA v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (cleaned up). The court “may also consider matters of which it may take judicial notice, and it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Hall v. Hodgkins*, 305 F. App’x at 227 (cleaned up). Dismissal is proper under Rule 12(b)(6), if, after taking the facts alleged in the complaint as true, “it appears certain that the plaintiff cannot prove any set of facts that would entitle it to the relief it seeks.” *Test*

*Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 570 (5th Cir. 2005) (quoting *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995)).

### 3. Collateral Estoppel

Highland and the Claimant Trust also argue that Plaintiffs' claims for declaratory relief asserted in Count III should be dismissed for the additional reason that Plaintiffs are collaterally estopped from bringing the claim. Collateral estoppel, or issue preclusion, is a preclusive doctrine that falls under the umbrella of the res judicata doctrine, which affords preclusive effect to final judgments, orders, and decrees of a federal court, including those of bankruptcy courts. *See In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (quoting *Test Masters*, 428 F.3d at 571 (“The rule of res judicata encompasses two separate but linked preclusive doctrines: (1) true res judicata or claim preclusion and (2) collateral estoppel or issue preclusion.”) and citing *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501-02 (2015)). Whereas “claim preclusion, or true res judicata, precludes parties from relitigating claims or causes of action that were or could have been raised in earlier litigation,” *id.*, issue preclusion, or collateral estoppel, “prevents the same parties or their privies from relitigating [an issue of fact or law] . . . when: ‘(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision.’” *Bradberry v. Jefferson Co., Texas*, 732 F.3d 540, 548 (5th Cir. 2013) (quoting *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005)); *see also In re Reddy Ice*, 611 B.R. at 809-10 (“To establish collateral estoppel under federal law one must show: (1) that the issue at stake be identical to the one involved in the prior litigation; (2) that the issue has been actually litigated in the prior litigation; and (3) that the determination of the issue in the prior litigation has been a critical and necessary part of the judgment in that earlier action.”) (quoting *Rabo Agrifinance, Inc. v. Terra XXI, Ltd.*, 583 F.3d 348, 353 (5th Cir. 2009)). “By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, these two

doctrines protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.” *In re Reddy Ice*, 611 B.R. at 808 (quoting *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008)). Although as a general rule *res judicata* must be pled as an affirmative defense, Fed. R. Bankr. P. 7008; Fed. R. Civ. P. 8(c)(1), “[i]f, based on the facts pleaded and judicially noticed, a successful affirmative defense appears, then dismissal under Rule 12(b)(6) is proper.” *Hall v. Hodgkins*, 305 F. App’x at 227-28.<sup>63</sup>

### ***B. Application of the Legal Standards Here***

#### ***1. Count I – Disclosure and Accounting***

##### **a) Plaintiffs’ equitable claim for disclosure and accounting in Count I cannot be considered “moot”; Defendants’ motion to dismiss Count I pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction must be denied.**

As earlier noted, in Count I of their Complaint, Plaintiffs seek an order compelling Highland and the Claimant Trust “to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the wall of silence was erected, and all liabilities.”<sup>64</sup> Plaintiffs, as holders of Contingent Trust Interests, have neither a contractual right to an accounting of the Claimant Trust assets nor a contractual right to whatever limited information rights under the terms of the Plan and CTA that are afforded to the Claimant Trust Beneficiaries. Plaintiffs acknowledge that they are not “Claimant Trust Beneficiaries.” But they ask the court, without any supporting facts or authority, to treat them as such and to order the Defendants to disclose not just information that

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<sup>63</sup> A court may also raise the issue of *res judicata* or collateral estoppel *sua sponte* in dismissing a claim or cause of action “in the interest of judicial economy where both actions were brought before the same court” or “where all of the relevant facts are contained in the record and all are uncontroverted.” *McIntyre v. Ben E. Keith Co.*, 754 F. App’x 264-65 (5th Cir. 2018) (cleaned up).

<sup>64</sup> Complaint ¶ 88.

Claimant Trust Beneficiaries are entitled to under the Plan and CTA but also information and an accounting that is not otherwise available even to the Claimant Trust Beneficiaries. To be clear, the Plaintiffs are asking this court to disregard the unambiguous and plain terms of the CTA and the Plan and grant the relief sought in Count I based upon equitable considerations.

Ignoring for a moment the Defendants’ Rule 12(b)(6) “failure to state a claim upon which relief may be granted” argument, this court will first focus on Defendants’ argument that Plaintiffs’ claim for equitable relief in Count I is moot and, thus, nonjusticiable and must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

Highland and the Claimant Trust take the position that their filing of the Pro Forma Adjusted Balance Sheet in July 2023, nearly two months after the filing of the Complaint on May 10, 2023, renders moot the Plaintiffs’ request for equitable relief in Count I because the balance sheet provided Plaintiffs (and all parties) with the very information Plaintiffs are asking for in Count I. Thus, “the issue presented in Count I is no longer ‘live.’”<sup>65</sup> Highland and the Claimant Trust add that the Post-Confirmation Reports, filed on the bankruptcy court docket in April 2023, prior to the Complaint being filed, “similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets.” In essence, Defendants argue that the filing of these two items “ha[s] thus eliminated the ‘actual controversy’ at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided.”<sup>66</sup>

Plaintiffs argue that Highland and the Claimant Trust’s mootness argument is exactly backward—that the filing of the Pro Forma Balance Sheet has not eliminated the “actual

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<sup>65</sup> MTD Brief ¶ 25.

<sup>66</sup> MTD Brief ¶¶ 25-26.

controversy” between the parties precisely *because of* the Defendants’ persistent “contentions and arguments that the Balance Sheet is not conclusive [as to the issue of whether Plaintiffs’ Contingent Trust Interests are likely to vest]” – that whether assets exceed liabilities at any one given point in time and whether Plaintiffs appear to be “in the money” is irrelevant to the question of vesting under the terms of the Plan and CTA.<sup>67</sup> Plaintiffs point out that Defendants have argued that Plaintiffs should not rely on the balance sheet, which, again, gives pro forma values as of May 31, 2023, adding that it is not determinative of whether Plaintiffs Contingent Trust Interests will likely vest at any point in the future because, under the terms of the CTA and Plan, Plaintiffs’ unvested, contingent interests in the Claimant Trust will vest if, and only if, the Claimant Trustee files the GUC Payment Certification, certifying that the Class 8 general unsecured claims and Class 9 subordinated claims, the Claimant Trust Beneficiaries under the CTA who are entitled to distributions of the Claimant Trust assets and have other rights under the terms of the CTA, have been indefeasibly paid in full (including as to Class 8, accrued and unpaid post-petition interest), all disputed claims in Classes 8 and 9 have been resolved, *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied. Because it is impossible to know or predict, in particular, what the indemnity obligations and the professional fees will be going forward, it would be just as impossible for the court to make any determination of whether Plaintiffs are “in the money” or whether their contingent interests are likely to vest.

This court cannot conclude that Defendants’ production and filing of the point-in-time Pro Forma Balance Sheet (as of May 31, 2023) and the Post-Confirmation Reports has rendered Plaintiffs’ current request in Count I for information and an accounting moot. A balance sheet and financial disclosures generally are fluid concepts. Relevant information in early 2023 may not

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<sup>67</sup> See Response ¶¶ 17-18.

remain relevant in mid-2024. Thus, Plaintiffs' equitable claim is not mooted by these earlier filed items, and the Count I request is justiciable. Accordingly, Defendants' motion to dismiss Count I under Rule 12(b)(1) for lack of subject matter jurisdiction will be denied. This determination simply means that the court has subject matter jurisdiction here to address Count I. Thus, this court will now consider whether Plaintiffs have stated a claim (in Count I) upon which relief can be granted under Rule 12(b)(6) standards.

**b) Plaintiffs have failed to state a claim upon which relief can be granted in Count I; dismissal of Count I is proper under Rule 12(b)(6).**

As noted above, dismissal under Rule 12(b)(6) is proper if, based upon the facts alleged in the Complaint, taken as true, as well as any judicially noticed facts, "it appears certain that the [Plaintiffs] cannot prove any set of facts that would entitle [them] to the relief [they] seek[ ]." *Test Masters*, 428 F.3d at 570 (quoting *C.C. Port, Ltd.*, 61 F.3d at 289). As noted above, in Count I, Plaintiffs, as holders of unvested contingent interests in the Claimant Trust, seek an order from this court compelling Defendants "to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets," and a detailed accounting of "all transactions that have occurred since [an alleged] wall of silence was erected, and all liabilities." As also noted above, Plaintiffs have acknowledged<sup>68</sup> that their contingent interests in the Claimant Trust have not vested, and Plaintiffs are not Claimant Trust Beneficiaries; thus, under the terms of the CTA, they are not entitled to the information and accounting they seek and do not have even the limited information rights afforded to the Claimant Trust Beneficiaries under the CTA.<sup>69</sup>

The court takes judicial notice of its Order Denying Leave to Bring Claims Pertaining to Claims Trading, in which the court found that HMIT, as a holder of a "Contingent Claimant Trust

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<sup>68</sup> See *supra* p.10.

<sup>69</sup> See *supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

Interest” was not a Claimant Trust Beneficiary, who, under the terms of the CTA and Delaware law, are the “beneficial owners” of the Claimant Trust, and rejected HMIT’s argument that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which, in turn, makes it a present “beneficial owner” under Delaware trust law.<sup>70</sup> The court concluded that, under Delaware Trust law, “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple” and that under the terms of the CTA, the holders of Contingent Trust Interests have no rights under the agreement and will not “be deemed ‘Beneficiaries’” under the CTA “‘unless and until’ they vest in accordance with the Plan and the CTA” and that “the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested based on HMIT’s unsupported allegation of wrongdoing on the part of . . . the Claimant Trustee.”<sup>71</sup>

Now, as before, the court finds and concludes that under the terms of the CTA and Delaware law, Plaintiffs are not beneficiaries or “beneficial owners” of the Claimant Trust who would be entitled to assert rights under the CTA. The court specifically rejects an argument of Plaintiffs that Delaware trust law does not define “beneficiary,” so the court should ignore the terms of the CTA and look to the definition of “beneficiary” under the Restatement (Third) of Trusts, under which they would be considered “beneficiaries” of the Claimant Trust, albeit a contingent beneficiary, who would be entitled under Delaware law to the relief they are requesting. The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act (the “Trust Act,” Chapter 38 of Title 12 of the Delaware Code), and the Trust Act does define “beneficial owner” and uses that term exclusively to refer to the beneficiaries of a Delaware statutory trust. Specifically, under the Trust Act, a statutory trust’s “beneficial owners” are “any

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<sup>70</sup> Order Denying Leave, 77-78.

<sup>71</sup> *Id.*, 78.

owner[s] of a beneficial interest in a statutory trust, the fact of ownership *to be determined and evidenced . . . in conformity to the applicable provisions of the governing instrument of the statutory trust.*<sup>72</sup> Thus, the question of whether Plaintiffs are “beneficiaries” of the Claimant Trust is (as the court concluded in the Order Denying Leave to Bring Claims Pertaining to Claims Trading) determined “by the CTA itself, pure and simple.” And, under the terms of the CTA, “Claimant Trust Beneficiaries” is defined to exclude Plaintiffs, who hold Class 10 and 11 unvested, contingent interests in the Claimant Trust, unless and until the GUC Payment Certification has been filed by the Claimant Trust. Until then, Plaintiffs “shall not have any rights under [the CTA]” and will not “be deemed ‘Beneficiaries’ under [the CTA].”<sup>73</sup>

Plaintiffs ask the court to ignore the plain terms of the CTA and to grant them the relief they have requested on an equitable basis because they “are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.”<sup>74</sup> But, they have not alleged any set of facts that would entitled them to equitable relief either. The court makes the same observation regarding Plaintiffs as it made in its Order Denying Valuation Motion: It appears that Plaintiffs “may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA.” The Plan with the incorporated CTA was confirmed over three years ago now, and neither of the Plaintiffs objected to or appealed the terms of the Plan or CTA that dictate oversight rights.<sup>75</sup> The Fifth Circuit, in September 2022,

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<sup>72</sup> 12 Del. C. § 3801(a) (emphasis added).

<sup>73</sup> See, e.g., Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

<sup>74</sup> Complaint ¶ 83.

<sup>75</sup> HMIT did not file an objection to confirmation of the Plan and did not appeal the Confirmation Order. Dugaboy filed an objection to confirmation and appealed the Confirmation Order, but did not object to the terms of the CTA that limited oversight and information rights to “Claimant Trust Beneficiaries” and specifically excluded the holders of the unvested, contingent interests in the Claimant Trust – such as Plaintiffs – from having any rights under the CTA unless and until their interests vested. The CTA was filed prior to the confirmation hearing and Plaintiffs and other parties could have objected to the terms of the Plan or CTA; they could have complained then about any lack of transparency, oversight, and information rights they believe existed under the terms of the CTA. They did not.

affirmed the Confirmation Order and the terms of the Plan and its incorporated documents, including the CTA, in all respects other than striking certain exculpations. *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419 (5th Cir. 2022). As was the case when the court entered its Order Denying Leave to Bring Claims Pertaining to Claims Trading, “[i]t is undisputed that HMIT’s [and Dugaboy’s] Contingent Trust Interest[s] ha[ve] not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s [and Dugaboy’s] Contingent Trust Interest[s] to be vested.”<sup>76</sup> The court did not have that power back in August 2023 (when it entered the Order Denying Leave to Bring Claims Pertaining to Claims Trading), and the court does not have that power now. Equitable relief is not available where, as here, the parties’ rights and obligations at issue are set forth in the Plan and the CTA. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court’s denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate “cannot be rewritten on equitable grounds,” and noting “[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms.”).

Plaintiffs’ make an argument that an implied covenant of good faith and fair dealing under Delaware law necessarily means that the terms of the CTA that govern the parties’ rights, here, including the information rights and rights to an accounting from the Claimant Trustee that Plaintiffs are seeking in Count I, can be overridden here. The court disagrees. Courts will not use the implied covenant of good faith to override the rights and responsibilities that were bargained for in a trust agreement. *See IKB Int’l S.A. v. Wilmington Trust Co.*, 774 F. App’x 719, 727-28 (3d

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<sup>76</sup> Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

Cir. 2019)(citing *Homan v. Turoczy*, 2005 WL 2000756 (Del. Ch. Aug. 12, 2005)); *see also Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) (“Existing contract terms control such that implied good faith cannot be used to circumvent the parties’ bargain or to create a free-floating duty unattached to the underlying legal document.”) (cleaned up); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1143 (Del. 1990) (holding that the “subjective standards [of good faith and fair dealing] cannot override the literal terms of an agreement.”) (citation omitted). Because the terms of the CTA expressly address the Claimant Trustee’s duties to provide, and parties’ rights to receive, information and an accounting with respect to the Claimant Trust, and those duties do not inure to the benefit of the Plaintiffs, who are not Claimant Trust Beneficiaries, the implied covenant of good faith and fair dealing cannot be used by the Plaintiffs or the court to compel the Claimant Trustee to disclose the information or provide the accounting as requested in Count I.

After considering the facts alleged in the Complaint, taken as true, and the facts and record of which the court has taken judicial notice, the court has determined that Plaintiffs cannot prove any set of facts that would entitle them to the relief they seek. Thus, dismissal of their claim for disclosure of additional information and for an accounting in Count I under Rule 12(b)(6) is proper.

## 2. Count II – Request for Declaratory Relief

In Count II of the Complaint, Plaintiffs seek a declaratory judgment and “determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations,” but this is only if “Defendants are compelled to provide information about the Claimant Trust assets” – in other words, this Count II request is conditioned on the court granting the equitable relief Plaintiffs seek in Count I.<sup>77</sup>

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<sup>77</sup> Complaint ¶¶ 89-92.

Defendants seek dismissal of Count II under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Before the court can address Defendants’ Rule 12(b)(6) motion, the court must first determine whether the claim for declaratory relief in Count II is justiciable such that the court has constitutional jurisdiction – subject matter jurisdiction – to consider and rule on the merits of Plaintiffs’ claim.<sup>78</sup> As noted above,<sup>79</sup> Plaintiffs’ request for declaratory relief in Count II is clearly predicated on the court first granting the relief requested in Count I: ordering the Defendants to disclose information about the Claimant Trust assets and liabilities (beyond what is contained in the Pro Forma Balance Sheet) and to provide to Plaintiffs a detailed accounting of all transactions involving the Claimant Trust. The court has concluded that Plaintiffs are not entitled to the information and accounting they have requested in Count I and that Count I should, thus, be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Because Plaintiffs’ request for declaratory relief in Count II is predicated on the court granting the relief requested in Count I and the court has denied that relief, Count II has now been rendered moot or, at least, not ripe such that it is not justiciable. *See American Precision Ammunition, L.L.C. v. City of Mineral Wells*, 90 F.4th 820, 827 (2024) (where the Fifth Circuit affirmed the district court’s Rule 12(b)(1) dismissal of a claim to reinstate an agreement as moot, where plaintiff’s claim was predicated on a finding by the district court that the agreement was valid and

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<sup>78</sup> Even though Defendants did not raise the issue of subject matter jurisdiction with respect to Count II, the court has an independent duty to assure itself that it has subject matter jurisdiction over a claim or cause of action before it addresses the merits of the claim under Rule 12(b)(6). *See supra* pp. 18-19; *see also Abraugh v. Altimus*, 26 F.4th 298, 304 (2022) (federal courts have a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.”).

<sup>79</sup> *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).<sup>80</sup>

In summary, the court has determined that Defendants’ request for declaratory relief in Count II is not justiciable and, as such, Count II must be dismissed pursuant to Rule 12(h)(3) for lack of subject matter jurisdiction. Anything this court might conclude with respect to Defendants’ motion to dismiss Count II under Rule 12(b)(6) would be an impermissible advisory opinion, so the court will not address Defendants’ arguments that Count II should be dismissed for failure to state a claim upon which relief can be granted.

### 3. Count III – Request for Declaratory Relief

In Count III of the Complaint, Plaintiffs seek a declaratory judgment and determination, “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”<sup>81</sup>

Defendants argue that the court should dismiss Count III under Rule 12(b)(1) for lack of subject matter jurisdiction on the basis that their request for declaratory relief in Count III is not justiciable because it is moot and otherwise seeks an impermissible advisory opinion. Defendants also argue that, if the court determines that it does have subject matter jurisdiction over Plaintiff’s claim for declaratory relief in Count III, Count III should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, including on the ground that Plaintiffs

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<sup>80</sup> Although Defendants did not argue in their briefing that Count II was not justiciable and so must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, in so many words, Defendants did argue during oral argument that “Count II must . . . be dismissed because it depends on Highland being ‘compelled to provide information about the Claimant Trust assets.’ . . . So if the Court doesn’t compel Highland, the Court has no ability to make the declaration that’s sought.” Feb. 14, 2024 Hrg. Trans., 17:9-13.

<sup>81</sup> *Id.* ¶¶ 93-95, at 27.

are collaterally estopped from asserting the claim for declaratory relief in Count III. The court agrees with Defendants that Count III is not justiciable and that Count III should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, and, thus, the court does not have jurisdiction to issue any pronouncement regarding the merits of Plaintiffs' claim for declaratory relief in Count III (and so it will not address Defendants' motion to dismiss pursuant to Rule 12(b)(6) with respect to Count III).

Similar to Plaintiffs' request for declaratory relief in Count II, Plaintiffs' request for declaratory relief in Count III is a contingent request – this one being predicated on the court first granting the declaratory relief in Count II, which, itself, is predicated on the court granting the equitable relief requested in Count I. Because Counts I and II are being dismissed for failure to state a claim and lack of subject matter jurisdiction, respectively, Plaintiffs' claim for declaratory relief in Count III is, thus, rendered not justiciable. That Counts II and III fall, if Count I falls, is inherent in the way Plaintiffs framed their claims and causes of action in the Complaint. Because Plaintiffs are not entitled to the information and accounting they are requesting in Count I, Plaintiffs' claims for declaratory relief in Counts II and III are rendered moot and/or not ripe and, thus, not justiciable. Plaintiffs' request for a declaratory judgment in Count III is not ripe for adjudication for the additional reason that Plaintiffs are asking the court to issue an opinion based on a set of “hypothetical, conjectural, conditional” facts “or based upon the possibility of a factual situation that may never develop” – the “likely” vesting of Plaintiffs' contingent interests in the Claimant Trust, making them Claimant Trust Beneficiaries. This is something federal courts are not permitted to do, even in the context of a request for declaratory relief (as is the case here with

Counts II and III).<sup>82</sup> The court finds and concludes that Plaintiffs' claim for declaratory relief in Count III is not justiciable and thus must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

This being the case, the court, as it must, declines to address the merits of whether Count III should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted (including based on Defendants' collateral estoppel argument).

Accordingly,

**IT IS ORDERED** that Defendants' Motion to Dismiss Count I of the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), be, and hereby is, **DENIED**;

**IT IS FURTHER ORDERED** that Plaintiffs have failed to state a claim upon which relief can be granted in Count I of the Complaint, and thus Count I of the Complaint is **DISMISSED** pursuant to Rule 12(b)(6);

**IT IS FURTHER ORDERED** that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint is **DISMISSED** for lack of subject matter jurisdiction;

**IT IS FURTHER ORDERED** that Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint is **DISMISSED** for lack of subject matter jurisdiction.

**###End of Memorandum Opinion and Order###**

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<sup>82</sup> See *Val-Com Acquisitions*, 434 F. App'x at 395-96; see also *Boyd Veigel*, 575 F. App'x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)) (where the Fifth Circuit discusses the ripeness doctrine in the context of declaratory judgment actions and states that "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.").



## I. INTRODUCTION

Before the court is a motion to dismiss (“Rule 12(b) Motion”) the above-referenced adversary proceeding (“Adversary Proceeding”).<sup>1</sup> The Rule 12(b) Motion was filed by the two Defendants named in the Adversary Proceeding: Highland Capital Management, L.P. (“Highland” or the “Reorganized Debtor”) and the Highland Claimant Trust (“Claimant Trust”). Highland obtained confirmation of a chapter 11 Plan<sup>2</sup> on February 22, 2021 (which Plan went effective on August 21, 2021). The Claimant Trust was established pursuant to the terms of the Plan and the Claimant Trust Agreement approved pursuant thereto. The Claimant Trust was created for the benefit of “Claimant Trust Beneficiaries,” which was defined under the Plan and the Claimant Trust Agreement to be the holders of allowed general unsecured (Class 8) and subordinated claims (Class 9) against Highland.

The Adversary Proceeding was brought more than two-years post-confirmation by Plaintiffs Hunter Mountain Investment Trust (“HMIT”) and The Dugaboy Investment Trust (“Dugaboy<sub>2</sub>” and, together with HMIT, the “Plaintiffs”).<sup>3</sup> These two Plaintiffs are controlled by Highland’s co-founder and former President and Chief Executive Officer, James D. Dondero (“Dondero”). The Plaintiffs held equity interests (i.e., limited partnership interests) in Highland. Pursuant to the terms of the Highland Plan, Plaintiffs now hold *unvested contingent interests* in the Claimant Trust—since the limited partnership interests in Highland were cancelled in exchange for unvested contingent interests in the Claimant Trust. These contingent interests will vest if, and

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<sup>1</sup> *The Highland Parties’ Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* (“Motion to Dismiss”), Dkt. No. 13. A memorandum of law in support of the Motion to Dismiss (“MTD Brief”) was filed at Dkt. No. 14.

<sup>2</sup> Capitalized terms not defined in this introduction shall be defined later herein.

<sup>3</sup> *See Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiff’s Interests in the Claimant Trust* (“Complaint”). Dkt. No. 1.

only if, the Claimant Trustee certifies that the Claimant Trust Beneficiaries (i.e., the Class 8 general unsecured claims and Class 9 subordinated claims under the Plan), have been paid in full *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied.

In this Adversary Proceeding, Plaintiffs seek: (1) an order from the bankruptcy court compelling the Reorganized Debtor and the Claimant Trustee to disclose certain information about the assets and liabilities remaining in the Claimant Trust, and, if they are compelled to disclose that information, (2) a declaratory judgment regarding the relative value of those assets and liabilities, and (3) if assets exceed liabilities, a declaratory judgment that HMIT’s and Dugaboy’s unvested contingent interests in the Claimant Trust are likely to vest at some point in the future.

To be clear, it is undisputed that neither HMIT nor Dugaboy are currently Claimant Trust Beneficiaries under the terms of the Plan and Claimant Trust Agreement and that the vesting conditions under the terms of the Plan and Claimant Trust Agreement have not occurred.

Highland and the Claimant Trust filed their Motion to Dismiss, seeking a dismissal, with prejudice, of all three counts of the Complaint. For the following reasons, the court grants the Motion to Dismiss.

## **I. JURISDICTION**

This court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and (O) and 1334.

## **II. BACKGROUND**

### ***A. The Bankruptcy Case and the Plan***

Highland was a Dallas-based investment firm that was co-founded in 1993 by Dondero and Mark Okada. It managed billion-dollar investment portfolios and assets, both directly and indirectly, through numerous affiliates that were owned or controlled by Dondero. On October

16, 2019 (the “Petition Date”), Highland, with Dondero in control<sup>4</sup> and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims, filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019.

Highland, a Delaware limited partnership, had three classes of limited partnership interests (Class A, Class B, and Class C) as of the Petition Date.<sup>5</sup> The Class A interests were held by the Plaintiff Dugaboy, and also Mark Okada’s family trusts, and Strand Advisors, Inc. (the latter of which was an entity wholly owned by Dondero and was also Highland’s only general partner). The Class B and C interests were held by the Plaintiff HMIT.<sup>6</sup>

Very shortly after the Petition Date, the official committee of unsecured creditors (the “Committee”) threatened to seek the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement. Later, the United States Trustee actually moved for the appointment of a chapter 11 trustee. Under the specter of a possible appointment of a trustee, Highland engaged in substantial and lengthy negotiations with the Committee, resulting in a corporate governance settlement approved by this court on January 9, 2020.<sup>7</sup> As a result of this corporate governance settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,<sup>8</sup> although he stayed on with Highland as an unpaid portfolio manager.

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<sup>4</sup> Mark Okada resigned from his role with Highland prior to the Petition Date.

<sup>5</sup> See *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (“Disclosure Statement”) Art. II(D)4, at 20. Bankr. Dkt. No. 1473.

<sup>6</sup> *Id.*

<sup>7</sup> Bankr. Dkt. No. 339.

<sup>8</sup> Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland’s motion to approve the settlement. See *Stipulation in Support of Motion of the Debtor for Approval of*

Three independent directors (“Independent Directors”) were chosen to lead Highland through its chapter 11 case: James P. Seery, Jr. (“Seery”), John S. Dubel, and retired bankruptcy judge Russell Nelms. Seery was appointed Highland’s Chief Executive Officer and Chief Restructuring Officer in July 2020.<sup>9</sup> According to Seery’s testimony at various hearings, it was during subsequent negotiations regarding a plan for Highland that Dondero made a threat to “burn down the place” if Dondero’s own proposed plan terms were not accepted by the company and its creditors. Indeed, soon after Highland negotiated compromises with its major creditors in the case (*e.g.*, the Redeemer Committee of the Crusader Fund; Joshua Terry; Acis; UBS) and began pursuing a plan supported by those creditors, Dondero and entities under his control began engaging in substantial, costly, and time-consuming litigation in the Highland case.<sup>10</sup> As the Fifth Circuit has described the situation, after Dondero’s plans failed, “he and others under his control began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland’s management, threatening employees, and canceling trades between Highland and its clients.”<sup>11</sup>

Highland’s negotiations with the Committee eventually culminated in the filing of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the

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*Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course*, Bankr. Dkt. No. 338.

<sup>9</sup> Bankr. Dkt. No. 854.

<sup>10</sup> As mentioned earlier, after January 2020, Dondero stayed on at Highland as an unpaid portfolio manager. In October 2020, Dondero resigned from all positions with Highland and its affiliates in response to a demand by the Independent Directors made after Dondero’s purported threats and disruptions to the Debtor’s operations.

<sup>11</sup> *NexPoint Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 48 F.4th 419, 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at \*1, \*26 (Bankr. N.D. Tex. June 7, 2021) where this court “[h]eld Dondero in civil contempt, sanctioning him \$100,000, and comparing this case to a ‘nasty divorce.’”).

“Plan”),<sup>12</sup> which was confirmed<sup>13</sup> in February 2021 over the objections of Dondero and Dondero-controlled entities. The Plan, which became effective on August 21, 2021 (“Effective Date”), is essentially an “asset monetization” plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down Highland over a three-year period by monetizing its assets and making distributions to the “Claimant Trust Beneficiaries,” as defined in the Plan and the CTA. General unsecured claims were classified as Class 8, and subordinated claims were classified as Class 9. Under the terms of the Plan, the holders of claims in Classes 8 and 9 received as of the Effective Date, in exchange for their claims, beneficial interests in the Claimant Trust and became “Claimant Trust Beneficiaries.” HMIT’s and Dugaboy’s former limited partnership interests in Highland were classified as Class 10 and Class 11, respectively. Under the terms of the Plan, these interests were cancelled in exchange for *unvested* contingent interests in the Claimant Trust (“Contingent Trust Interests”) that will vest if, and only if, the Claimant Trustee certifies that the Class 8 general unsecured claims and Class 9 subordinated claims have been paid in full, all disputed claims in Classes 8 and 9 have been resolved, *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied.<sup>14</sup> In other

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<sup>12</sup> Bankr. Case Dkt. No. 1808.

<sup>13</sup> The Plan was confirmed on February 22, 2021. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Confirmation Order”). Bankr. Dkt. No. 1943.

<sup>14</sup> *See generally* Plan, Arts. III & IV.

words, HMIT and Dugaboy will become “Claimant Trust Beneficiaries” if, and only if, the vesting conditions occur.

### ***B. Information Rights under the CTA***

The Claimant Trust is a Delaware statutory trust established pursuant to the terms of that certain *Claimant Trust Agreement* (“CTA”), effective August 11, 2021, for the benefit of Claimant Trust Beneficiaries, which are defined in the CTA to be<sup>15</sup>

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

Under the clear terms of the CTA, information rights are limited, and the Claimant Trustee has no duty to provide an accounting of the Claimant Trust’s assets to any party, including the Claimant Trust Beneficiaries.<sup>16</sup> The CTA grants limited information rights solely to a “Claimant Oversight Board”<sup>17</sup> and the Claimant Trust Beneficiaries:<sup>18</sup>

The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-

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<sup>15</sup> CTA § 1.1(h). The CTA was expressly incorporated into and is a part of the Plan. *See* Confirmation Order ¶ 25, at 27; Plan Art. IV(J). The final form of the CTA was filed with the court at docket number 1811-2, as modified by docket number 1875-4.

<sup>16</sup> CTA § 3.12(a) (“Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting . . . .”); § 5.2 (“The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets *or to require an accounting.*”) (emphasis added).

<sup>17</sup> “Oversight Board” was defined in the CTA as “the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.”

<sup>18</sup> CTA § 3.12(b).

determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

Nothing in the Plan or the CTA grants any other information rights, and, in fact, the CTA makes clear that the Claimant Trust Beneficiaries do not have any information rights outside of those limited information rights set forth in the CTA,<sup>19</sup> which do not include rights to the granular asset and subsidiary level information that the Plaintiffs are asking for in their Complaint (as later further discussed).

As earlier noted, the Claimant Trust Beneficiaries are defined in the CTA to be only the holders of allowed Class 8 general unsecured claims and allowed Class 9 subordinated claims unless and until the Contingent Trust Interests held by the holders of the former limited partnership interests (classified in Classes 10 and 11 under the Plan) vest, at which point, the Class 10 and Class 11 claimants will become Contingent Trust Beneficiaries.<sup>20</sup> The CTA specifically provides that the holders of Contingent Trust Interests "shall not have any rights under this Agreement" and will not "be deemed 'Beneficiaries' under this Agreement," "unless and until" they vest in accordance with the Plan and the CTA and the Claimant Trustee files with the Bankruptcy Court a certification that all holders of general unsecured claims have been indefeasibly paid in full,

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<sup>19</sup> CTA § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).").

<sup>20</sup> See CTA § 1.1(h); Plan Art. I.B.27.

including, as to Class 8 claims, “all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the ‘GUC Payment Certification’).”<sup>21</sup>

### ***C. The Complaint and Motion to Dismiss***

#### ***1. The Complaint***

On May 10, 2023, HMIT and Dugaboy filed the Complaint in this Adversary Proceeding, asserting one claim for equitable relief and, if the court grants the request for equitable relief, two claims for declaratory relief.

In Count I,<sup>22</sup> entitled “First Claim for Relief - Disclosures of Claimant Trust Assets and Request for Accounting,” Plaintiffs seek an order compelling Highland and the Claimant Trust “to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the [alleged] wall of silence was erected, and all liabilities.”<sup>23</sup> Plaintiffs acknowledge in their Complaint that, under the terms of the Plan and the CTA, they are not entitled to the information they seek: While “[t]he Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and to notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate[,]”<sup>24</sup> . . . ***no like information regarding valuation of the Claimant Trust Assets is available to Plaintiffs as holders of Contingent Claimant Trust Interests . . .***<sup>25</sup> Thus, Plaintiffs seek equitable relief

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<sup>21</sup> See CTA § 5.1(c).

<sup>22</sup> For ease of reference, the court will refer to the Plaintiffs’ “First Claim for Relief,” “Second Claim for Relief,” and “Third Claim for Relief” as Count I, Count II, and Count III, respectively.

<sup>23</sup> Complaint ¶¶ 82-88.

<sup>24</sup> *Id.* ¶ 75 (citing Plan, Art. IV(B)(9)).

<sup>25</sup> *Id.* ¶ 76.

in Count I – an order compelling the Highland Parties to disclose information that Plaintiffs admit they are not otherwise entitled to under the terms of the Plan and the CTA.

In Count II, entitled “Second Claim for Relief – Declaratory Judgment Regarding Value of Claimant Trust Assets,” Plaintiffs seek a declaratory judgment and “determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations,” “[o]nce Defendants are compelled to provide information about the Claimant Trust assets.”<sup>26</sup>

Finally, in Count III, entitled “Third Claim for Relief – Declaratory Judgment and Determination Regarding Nature of Plaintiffs’ Interests,” the Plaintiffs seek a declaratory judgment and determination, “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”<sup>27</sup> HMIT and Dugaboy, by asking the court for a declaratory judgment that “the conditions are such that their Contingent Claimant Trust Interests *are likely to vest* into Claimant Trust Interests, making them Claimant Trust Beneficiaries”<sup>28</sup> (if the court first grants the equitable relief requested in Count I and the declaratory relief in Count II), admit and acknowledge that they are *not* Claimant Trust Beneficiaries and that their Claimant Trust Interests *have not vested* under the terms of the Plan and CTA. In fact, HMIT and Dugaboy clarify in footnote 6, with respect to Count III, that “[they] do not ask the Court to determine that they are Claimant Trust Beneficiaries or otherwise to convert their contingent interests into non-contingent interests[,]” and they

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<sup>26</sup> *Id.* ¶¶ 89-92, at 26. The court notes that Plaintiffs’ request for declaratory relief in Count II is predicated on the court granting the equitable relief sought in Count I.

<sup>27</sup> *Id.* ¶¶ 93-95, at 27. The court notes that Plaintiffs’ request for declaratory relief in Count III is predicated on the court granting the declaratory relief sought in Count II, which (as noted) is, in turn, predicated on the court granting the equitable relief sought in Count I.

<sup>28</sup> *Id.* ¶ 94, at 27 (emphasis added).

acknowledge that “[a]ll of that must be done according to the terms of the Plan and the Claimant Trust Agreement.”<sup>29</sup>

2. The Valuation Motion, Precursor to the Complaint

This is not the first time Plaintiffs have sought a valuation and accounting from the Claimant Trustee. In fact, the Complaint was filed after two prior efforts by the Plaintiffs to seek a valuation and accounting for the purported purpose of having the court determine that the Claimant Trust assets exceeded liabilities such that they were “in the money” and therefore, they argued, their Contingent Trust Interests were likely to vest in the near future. The first time was via a motion<sup>30</sup> that Dugaboy (with the support of HMIT)<sup>31</sup> filed in June 2022, that this court denied<sup>32</sup> on the ground that it was procedurally defective – that the claims for equitable and declaratory relief sought therein must be brought as an adversary proceeding. Specifically, this court held that, in asking the court to determine whether Dugaboy was “in the money” and whether “its status as a holder of a ‘Contingent Trust Interest’ [would] soon spring into the status of a ‘Claimant Trust Beneficiary,’” the Valuation Motion was asking “for the court to determine the extent of Dugaboy’s interest in the property in the Creditor’s Trust,” which is a “proceeding to

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<sup>29</sup> *Id.* ¶ 94 n.6, at 27.

<sup>30</sup> On June 30, 2022, Dugaboy filed a *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy sought “a determination by this Court of the current value of the estate and an accounting of the assets currently held the [sic] Claimant Trust and available for distribution to creditors” and, on September 21, 2022, a *Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* in which Dugaboy further stated that “the Court should conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and Claimant Trustee of the value of the estate and all assets held by Claimant Trust that are available for distribution to creditors and residual equity holders.” (together, the “Valuation Motion”). In the Valuation Motion, the movants sought a determination of the value of the assets of the Claimant Trust and the entry of “an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now . . . .”

<sup>31</sup> HMIT filed a *Limited Response in Support of Certain Requested Relief* on August 24, 2022.

<sup>32</sup> See *Order Denying Motion [DE #3383] and Supplemental Motion [DE #3533] of Dugaboy Investment Trust Due to Procedural Deficiency: Adversary Proceeding is Required* (“Order Denying Valuation Motion”), entered on December 20, 2022. Bankr. Dkt. No. 3645.

determine the validity, priority, or extent of . . . [an] interest in property” under Fed. R. Bankr. P. 7001(2) that must be brought as an adversary proceeding.<sup>33</sup> Additionally, the court held that the movants’ request for the court to make a determination of the current value of the estate and for an accounting of the Claimant Trust assets was a request for equitable relief that was not provided for in the Plan, and that such a request must be brought via an adversary complaint pursuant to Fed. R. Bankr. P. 7001(7).<sup>34</sup> Finally, the court held that the request in the Valuation Motion clearly was requesting a declaratory judgment as to the value of assets, the extent of Dugaboy’s and HMIT’s interests in assets, and ultimately, “a declaration as to Dugaboy’s standing” that should be brought as an adversary proceeding under the terms of Fed. R. Bankr. P. 7001(9) as “a proceeding to obtain declaratory judgment relating to any of the foregoing [types of procedures listed in Rule 7001].”<sup>35</sup> Accordingly, the court denied the Valuation Motion “for procedural deficiency[,] without prejudice to the filing of an adversary proceeding.”<sup>36</sup>

Next, Dugaboy and HMIT filed a motion seeking leave from this court to file the Complaint, pursuant to the “Gatekeeper Provisions” of the court’s prior orders and the Plan (which have been discussed at length in various Highland opinions),<sup>37</sup> but then withdrew the motion for leave (the “Withdrawn Motion for Leave”), after Highland agreed at a status conference held on April 24, 2023 that leave of court was not necessary for the filing of this particular Adversary

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<sup>33</sup> Order Denying Valuation Motion, 4.

<sup>34</sup> *Id.* Fed. R. Bankr. P. 7001(7) states that “a proceeding to obtain an injunction or other equitable relief, except when a . . . chapter 11 plan provides for the relief” is an adversary proceeding governed by Bankruptcy Rules 7001 *et seq.*

<sup>35</sup> *See id.* at 6 (quoting Fed. R. Bankr. P. 7001(9)).

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *E.g., NexPoint Advisors, L.P. v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.)*, 48 F.4<sup>th</sup> 419, 439 (5<sup>th</sup> Cir. 2022) (Fifth Circuit upheld “Gatekeeper Provisions” approved by the bankruptcy court in this case, that required persons to obtain leave of the bankruptcy court before initiating action against certain parties).

Proceeding.<sup>38</sup> Plaintiffs then filed the Complaint that initiated this Adversary Proceeding on May 10, 2023.

3. *Meanwhile, HMIT Files Gatekeeper Motion for Leave to File a Different Adversary Proceeding against the Claimant Trustee and Others Regarding Claims Trading*

Meanwhile, HMIT filed a separate *Emergency Motion for Leave to File Verified Adversary Proceeding* (“HMIT Motion for Leave Regarding Claims Trading”),<sup>39</sup> which was later supplemented and modified.<sup>40</sup> HMIT’s Motion for Leave Regarding Claims Trading should not be confused with its (and Dugaboy’s) earlier Withdrawn Motion for Leave, just discussed. In the HMIT Motion for Leave Regarding Claims Trading, it sought leave pursuant to the Gatekeeper Provisions to sue Highland, Seery (i.e., the Claimant Trustee), and certain purchasers of large unsecured claims based upon allegations of “insider trading” and breach of fiduciary duty. A hearing was held on the HMIT Motion for Leave Regarding Claims Trading, following which the court took the matter under advisement.

While the matter was pending under advisement, Dondero and certain of his controlled entities (the “Dondero Parties”) filed a *Motion to Stay and to Compel Mediation* (the “Mediation Motion”),<sup>41</sup> which was granted, in part, on August 2, 2023.<sup>42</sup> In compliance with an agreed-upon court order<sup>43</sup> and in furtherance of mediation, Highland filed a *pro forma* adjusted balance sheet

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<sup>38</sup> In confirming that Highland had agreed that a gatekeeper motion would not be necessary “since the adversary would just be seeking a valuation and not monetary or other relief,” Highland’s counsel reported that Highland “does not believe [HMIT] or Dugaboy is entitled to any information whatsoever” and that “[t]hey certainly have no legal right to the information [which is] why they have to pursue . . . an equitable claim.” Transcript of April 24, 2023 Status Conference, 4:7-23. Bankr. Dkt. No. 3765.

<sup>39</sup> Bankr. Dkt. No. 3699 (filed on March 28, 2023).

<sup>40</sup> See Bankr. Dkt. Nos. 3760, 3815, and 3816.

<sup>41</sup> Bankr. Dkt. No. 3757.

<sup>42</sup> Bankr. Dkt. No. 3897.

<sup>43</sup> Bankr. Dkt. No. 3870.

(“Pro Forma Adjusted Balance Sheet”) for the Claimant Trust,<sup>44</sup> which disclosed a May 31, 2023 point-in-time \$152 million in assets (of which only \$37 million was cash or restricted cash) and \$130 million in liabilities, for a total equity value of \$22 million. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been filed in the Bankruptcy Case in certain “Post-Confirmation Reports” as of April 2023.<sup>45</sup> Highland and the Claimant Trustee represent that the Post-Confirmation Reports were “enhanced” and publicly filed to provide interested parties substantially more information than was required, and that these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer.<sup>46</sup> In any event, the Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports are now central to Highland and the Claimant Trustee’s “mootness” argument later discussed herein.

On August 25, 2023, the court issued a 105-page memorandum opinion and order denying HMIT’s Motion for Leave Regarding Claims Trading (“Order Denying Leave to Bring Claims Pertaining to Claims Trading”)<sup>47</sup> on multiple grounds, including on the bases that: (a) HMIT lacked constitutional standing to bring the claims; (b) even if it had constitutional standing, it lacked prudential standing under Delaware trust law to bring the claims; and (c) the proposed claims also were not “colorable” claims that the court, pursuant to its gatekeeping function under the Gatekeeper Provisions, should allow HMIT to bring. The court found, among other things, that HMIT was not a “Claimant Trust Beneficiary” and not a “beneficial owner” of the Claimant Trust. The court further determined that HMIT should not be treated as a “Claimant Trust

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<sup>44</sup> Bankr. Dkt. No. 3872 (filed July 6, 2023).

<sup>45</sup> See Bankr. Dkt. Nos. 3756 and 3757 (“Post-Confirmation Reports”).

<sup>46</sup> MTD Brief ¶ 20, at 10.

<sup>47</sup> Bankr. Dkt. No. 3904.

Beneficiary” after both “considering the current value of the Claimant Trust Assets” and the allegations of wrongful conduct by the Claimant Trustee, as the court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested.” The court noted that “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple,” and it was undisputed that HMIT’s Contingent Trust Interest had not vested yet under the terms of the Plan and the CTA.

On September 8, 2023, HMIT filed a motion to reconsider (“HMIT’s Motion to Reconsider Lack of Standing”)<sup>48</sup> the Order Denying Leave to Bring Claims Pertaining to Claims Trading. HMIT argued that the court should reconsider its ruling because the Pro Forma Adjusted Balance Sheet, filed in July 2023 (after the court took the HMIT Motion for Leave Regarding Claims Trading under advisement, but before the court issued its August 2023 Order Denying Leave to Bring Claims Pertaining to Claims Trading, established that (1) the value of the Claimant Trust assets exceeded liabilities; (2) HMIT was “in the money”; and (3) its unvested Contingent Trust Interest was likely to vest and, therefore, HMIT had both constitutional and prudential standing as a Claimant Trust Beneficiary to bring the proposed claims.

On October 6, 2023, the court entered an order denying reconsideration (“Order Denying HMIT’s Motion to Reconsider Lack of Standing”),<sup>49</sup> finding that the Pro Forma Adjusted Balance sheet did not “demonstrate that HMIT’s contingent interest [wa]s ‘in the money,’” noting that HMIT d[id] not give proper attention to the voluminous supplemental notes” in the Pro Form Adjusted Balance Sheet that are “integral to understanding the numbers therein.”<sup>50</sup> In addition

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<sup>48</sup> Bankr. Dkt. No. 3905.

<sup>49</sup> Bankr. Dkt. No. 3936.

<sup>50</sup> Order Denying HMIT’s Motion to Reconsider Lack of Standing, 3 (citing Notes 5 and 6 of the Balance Sheet, which show that Highland will operate at an “operating loss prospectively,” and that the administrative expenses and legal fees continue to deplete assets, with “significant and widespread litigation result[ing] in massive indemnification obligations, as well as massive, continuing legal fees and expenses”).

this court also found that the Pro Forma Adjusted Balance Sheet did not constitute “newly discovered evidence” because it did not contain information that was materially different from the information disclosed in the Post-Confirmation Reports, filed three months earlier.<sup>51</sup>

4. The Rule 12(b) Motion

As noted earlier, this Adversary Proceeding was briefly stayed pending a court-ordered<sup>52</sup> mediation that ultimately proved to have been unsuccessful.<sup>53</sup> Then, on November 22, 2023, Highland and the Claimant Trustee filed their Rule 12(b) Motion that is now pending before the court.<sup>54</sup>

In their Rule 12(b) Motion, Highland and the Claimant Trustee seek a dismissal of Counts I and III pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure<sup>55</sup> (made applicable herein pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure<sup>56</sup>) for ***lack of subject matter jurisdiction***—specifically, Counts I and III based on ***mootness***, and Count III based on the additional ground that Plaintiffs seek an ***impermissible advisory opinion***. Thus, there is no ***justiciable controversy*** with respect to either of these counts. In addition to the lack of subject matter arguments, Highland and the Claimant Trustee also seek dismissal of Count III on the basis that the Plaintiffs are ***collaterally estopped*** from bringing the claim for declaratory relief. Finally,

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<sup>51</sup> *Id.* at 2-3.

<sup>52</sup> See, Bankr. Dkt. No. 3879, which was entered on August 2, 2023, granting, in part, the April 20, 2023 *Motion to Stay and to Compel Mediation* [Bankr. Dkt. No. 3752] filed by Dondero and certain of his affiliates in the main bankruptcy case.

<sup>53</sup> See *Joint Notice of Mediation Report* (filed on November 7, 2023). Bankr. Dkt. No. 3964.

<sup>54</sup> See *Order Approving Stipulation and Proposed Scheduling Order* (entered on November 21, 2023). Dkt. No. 12.

<sup>55</sup> Hereinafter, the court shall refer to a rule of the Federal Rules of Civil Procedure as “Rule \_\_\_\_.”

<sup>56</sup> Hereinafter, the court shall refer to a rule of the Federal Rules of Bankruptcy Procedure as “Bankruptcy Rule \_\_\_\_.”

the Highland Parties seek dismissal of all three counts pursuant to Rule 12(b)(6) (made applicable herein by Bankruptcy Rule 7012) for *failure to state a claim upon which relief can be granted*.<sup>57</sup>

The court has considered the Rule 12(b) Motion, HMIT's and Dugaboy's response<sup>58</sup> in opposition, and the reply thereto.<sup>59</sup> Oral arguments were heard on February 14, 2024, following which this court took the matter under advisement.<sup>60</sup> Having considered all of this, the undisputed facts set forth in the Complaint, and certain facts of which this court takes judicial notice, and for the following reasons, this court concludes that: (a) it does not lack subject matter jurisdiction over Count I of the Complaint but that HMIT and Dugaboy have failed to state a claim upon which relief can be granted as to Count I, and thus, Count I should be dismissed pursuant to Rule 12(b)(6); (b) that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint should be dismissed for lack of subject matter jurisdiction; and, (c) Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint should be dismissed for lack of subject matter jurisdiction.

### III. CONCLUSIONS OF LAW

#### A. *Legal Standards*

“When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citation omitted). “Moreover, when a complaint could be dismissed for both lack of jurisdiction and failure to state a claim, the court

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<sup>57</sup> See generally MTD Brief, 11-25.

<sup>58</sup> *The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* (“Response”). Dkt. No. 17.

<sup>59</sup> *The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint* (“Reply”). Dkt. No. 21.

<sup>60</sup> A transcript of the February 14 hearing was filed on February 20, 2024. Dkt. No. 25.

should dismiss only on the jurisdictional ground under Rule 12(b)(1), without reaching the questions of failure to state a claim under Rule 12(b)(6)—a “practice [that] prevents courts from issuing advisory opinions.” *Crenshaw-Logal v. City of Abilene, Texas*, 436 F. App’x 306 (5<sup>th</sup> Cir. 2011) (cleaned up). “The practice also prevents courts without jurisdiction ‘from prematurely dismissing a case with prejudice.’” *Id.* (quoting *Ramming*, 281 F.3d at 161). Thus, the court will address the Rule 12(b)(1) issues and, then, to the extent the court finds that it has subject matter jurisdiction over any of the claims asserted by the Plaintiffs, the court will address the separate collateral estoppel argument and whether the Plaintiffs have failed to state a claim upon which relief can be granted.

1. Rule 12(b)(1) – Lack of Subject Matter Jurisdiction

As noted, the Defendants argue that the court lacks subject matter jurisdiction over Plaintiffs’ claims asserted in Counts I and III of their Complaint, and, therefore, they must be dismissed pursuant to Rule 12(b)(1). The court notes that, pursuant to Rule 12(h)(3), the court “must dismiss the action” “if [it] determines at any time that it lacks subject matter jurisdiction,” whether the issue is raised by a party or *sua sponte* by the court. This is so because federal courts have a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.” *Abraugh v. Altimus*, 26 F.4th 298, 304 (5<sup>th</sup> Cir. 2022).

Under Article III of the Constitution, a federal court “may only adjudicate actual, ongoing controversies.” *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5<sup>th</sup> Cir. 2023) (citing *Honig v. Doe*, 484 U.S. 305, 317 (1988)). and thus “[w]hether a case or controversy remains live throughout litigation is a jurisdictional matter.” *Id.* (citations omitted). “If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). As noted by the Supreme

Court, “the doctrines of [constitutional standing,] mootness, ripeness, and political question all originate in Article III’s ‘case’ or ‘controversy’ language.” *Id.* at 352 (citations omitted). The justiciability requirement found in Article III forms the basis of the overarching and, at times, overlapping well-settled rule that federal courts are not permitted to issue advisory opinions. *See Su v. F Elephant, Inc. (In re TMT Procurement Corp.)*, No. 21-20146, 2022 WL 38985, at \*2 (5th Cir. Jan. 4, 2022) (“[T]he federal courts established pursuant to Article III of the Constitution do not render advisory opinions,’ and parties must articulate ‘concrete legal issues, presented in actual cases, not abstractions.’”) (quoting *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (quoting *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947))). The Fifth Circuit in *Shemwell*<sup>61</sup> recently expounded on the “interplay among the justiciability doctrines” that are “rooted in the Constitution”:

Our justiciability doctrines – including mootness – are rooted in the Constitution. Under Article III of the Constitution, this court may only adjudicate actual, ongoing controversies. Accordingly, whether a case or controversy remains live throughout litigation is a jurisdictional matter. Reframed in the familiar taxonomy of standing and ripeness, this means that, throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. Or, as the Court has sometimes articulated the interplay among the justiciability doctrines, standing generally assesses whether the [requisite] interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings.

The Supreme Court has interpreted the “cases” and “controversies” language in Article III “to demand that an actual controversy be extant at all stages of review, not merely at the time the complaint is filed,” and, thus, “[i]f an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-161 (2016)

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<sup>61</sup> 63 F.4th at 483.

(cleaned up); *see also* *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006) (“Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).”) (cleaned up). “A case becomes moot, however, only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Campbell-Ewald*, 577 U.S. at 161 (cleaned up). In other words, “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purpose of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” and “no matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (cleaned up).

As alluded to above, ripeness is another justiciability doctrine that originates in Article III’s “case” or “controversy” requirement. *See also* *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967) (“Ripeness is a constitutional prerequisite to the exercise of jurisdiction.”)). “Ripeness ‘separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for judicial review.’” *In re Boyd Veigel, P.C.*, 575 F. App’x 393, 396 (5th Cir. 2014) (quoting *United Transp. Union v. Foster*, 205 F.3d 851, 857 (5th Cir. 2000) and citing and quoting *United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947) on the doctrine of ripeness). The Fifth Circuit set forth the standard for determining whether a dispute is ripe for adjudication in *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 833 F.2d 583 (5th Cir. 1987): “A court should dismiss a case for lack of ‘ripeness’ when the case is abstract or hypothetical. . . . A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if

further factual development is required.” *Orix*, 212 F.3d at 895 (quoting *id.* at 586-87) (additional citations omitted).

As noted by the *Orix* court, “[m]any courts have recognized that applying the ripeness doctrine in the declaratory judgment context presents a unique challenge.” When considering a declaratory judgment action (and Plaintiffs here are seeking declaratory relief in Counts II and III), the court must first determine whether the action is justiciable, as the court must do in connection with all claims for relief. Under the federal Declaratory Judgment Act, “any court of the United States” is authorized to “declare the rights and other legal relations” of parties in “a case of actual controversy.” 28 U.S.C. § 2201; Fed. R. Civ. P. 57; *see also Texas Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 534 (5th Cir. 2012). “That controversy must be of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts.” *Id.* (cleaned up).<sup>62</sup> The “unique challenge” that applying the ripeness doctrine to requests for declaratory judgment presents arises from the fact that declaratory judgments are “typically sought before a completed ‘injury-in-fact’ has occurred,” *Orix*, 212 F.3d at 896 (quoting *Foster*, 205 F.3d 851, 857 (5th Cir. 2000)), and, “declaratory actions contemplate an ‘ex ante determination of rights’ that ‘exists in some tension with traditional notions of ripeness.’” *Orix*, 212 F.3d at 896 (quoting *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 692 (1st Cir. 1994)). Notwithstanding this tension that exists in applying the justiciability requirements to declaratory judgment actions, “a declaratory judgment action, like any other action, must be ripe in order to be justiciable.” *Id.* “Thus, courts will not grant declaratory judgments unless the suit is ripe for review.” *Boyd Veigel*, 575 F. App’x at 396 (citing *Foster*, 205 F.3d at 857); *see also Mitchell*, 330 U.S. at 89 (“As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory

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<sup>62</sup> The Fifth Circuit “interprets the § 2201 ‘case or controversy’ requirement to be coterminous with Article III’s ‘case or controversy’ requirement.” *Id.* (quoting *Hosein v. Gonzales*, 452 F.3d 401, 403 (5th Cir. 2006)).

opinions. For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field.”) (cleaned up).

In addressing the ripeness doctrine in the declaratory judgment context, the Fifth Circuit has stated that “the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment,” *Boyd Veigel*, 575 F. App’x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)), and that “[w]hether particular facts are sufficiently immediate to establish an actual controversy is a question that must be addressed on a case-by-case basis. *Orix*, 212 F.3d at 896 (citations omitted). “The controversy must be such that it can presently be litigated and decided and not hypothetical, conjectural, conditional or based upon the possibility of a factual situation that may never develop.” *Val-Com Acquisitions Tr. v. Chase Home Fin., L.L.C.*, 434 F. App’x 395, 395-96 (5th Cir. 2011) (cleaned up).

“The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction, so the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Shemwell v. City of McKinney, Texas*, 63 F.4th 480, 483 (5th Cir. 2023) (citing *id.*) (cleaned up) *see also Val-Com*, 434 F. App’x at 396 (“The plaintiffs have the burden of establishing the existence of an actual controversy under the [Declaratory Judgment] Act.”). “Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

2. Rule 12(b)(6) – Failure to State a Claim upon which Relief Can Be Granted

As noted, Highland and the Claimant Trust also argue that all three counts of the Complaint should be dismissed pursuant to Rule 12(b)(6), made applicable herein by Bankruptcy Rule 7012, because Plaintiffs have failed “to state a claim upon which relief can be granted.” To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). “When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679. “In ruling on a Rule 12(b)(6) motion to dismiss, the court cannot look beyond the pleadings and must accept as true those well-pleaded factual allegations in the complaint,” *Hall v. Hodgkins*, 305 F. App’x 224, 227 (5th Cir. 2008) (cleaned up), but it is “not bound to accept as true a legal conclusion couched as factual allegation.” *Randall D. Wolcott MD PA v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (cleaned up). The court “may also consider matters of which it may take judicial notice, and it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Hall v. Hodgkins*, 305 F. App’x at 227 (cleaned up). Dismissal is proper under Rule 12(b)(6), if, after taking the facts alleged in the complaint as true, “it appears certain that the plaintiff cannot prove any set of facts that would entitle it to the relief it seeks.” *Test*

*Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 570 (5th Cir. 2005) (quoting *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995)).

### 3. Collateral Estoppel

Highland and the Claimant Trust also argue that Plaintiffs' claims for declaratory relief asserted in Count III should be dismissed for the additional reason that Plaintiffs are collaterally estopped from bringing the claim. Collateral estoppel, or issue preclusion, is a preclusive doctrine that falls under the umbrella of the res judicata doctrine, which affords preclusive effect to final judgments, orders, and decrees of a federal court, including those of bankruptcy courts. *See In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (quoting *Test Masters*, 428 F.3d at 571 (“The rule of res judicata encompasses two separate but linked preclusive doctrines: (1) true res judicata or claim preclusion and (2) collateral estoppel or issue preclusion.”) and citing *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501-02 (2015)). Whereas “claim preclusion, or true res judicata, precludes parties from relitigating claims or causes of action that were or could have been raised in earlier litigation,” *id.*, issue preclusion, or collateral estoppel, “prevents the same parties or their privies from relitigating [an issue of fact or law] . . . when: ‘(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision.’” *Bradberry v. Jefferson Co., Texas*, 732 F.3d 540, 548 (5th Cir. 2013) (quoting *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005)); *see also In re Reddy Ice*, 611 B.R. at 809-10 (“To establish collateral estoppel under federal law one must show: (1) that the issue at stake be identical to the one involved in the prior litigation; (2) that the issue has been actually litigated in the prior litigation; and (3) that the determination of the issue in the prior litigation has been a critical and necessary part of the judgment in that earlier action.”) (quoting *Rabo Agrifinance, Inc. v. Terra XXI, Ltd.*, 583 F.3d 348, 353 (5th Cir. 2009)). “By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, these two

doctrines protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.” *In re Reddy Ice*, 611 B.R. at 808 (quoting *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008)). Although as a general rule *res judicata* must be pled as an affirmative defense, Fed. R. Bankr. P. 7008; Fed. R. Civ. P. 8(c)(1), “[i]f, based on the facts pleaded and judicially noticed, a successful affirmative defense appears, then dismissal under Rule 12(b)(6) is proper.” *Hall v. Hodgkins*, 305 F. App’x at 227-28.<sup>63</sup>

### ***B. Application of the Legal Standards Here***

#### ***1. Count I – Disclosure and Accounting***

##### **a) Plaintiffs’ equitable claim for disclosure and accounting in Count I cannot be considered “moot”; Defendants’ motion to dismiss Count I pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction must be denied.**

As earlier noted, in Count I of their Complaint, Plaintiffs seek an order compelling Highland and the Claimant Trust “to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the wall of silence was erected, and all liabilities.”<sup>64</sup> Plaintiffs, as holders of Contingent Trust Interests, have neither a contractual right to an accounting of the Claimant Trust assets nor a contractual right to whatever limited information rights under the terms of the Plan and CTA that are afforded to the Claimant Trust Beneficiaries. Plaintiffs acknowledge that they are not “Claimant Trust Beneficiaries.” But they ask the court, without any supporting facts or authority, to treat them as such and to order the Defendants to disclose not just information that

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<sup>63</sup> A court may also raise the issue of *res judicata* or collateral estoppel *sua sponte* in dismissing a claim or cause of action “in the interest of judicial economy where both actions were brought before the same court” or “where all of the relevant facts are contained in the record and all are uncontroverted.” *McIntyre v. Ben E. Keith Co.*, 754 F. App’x 264-65 (5th Cir. 2018) (cleaned up).

<sup>64</sup> Complaint ¶ 88.

Claimant Trust Beneficiaries are entitled to under the Plan and CTA but also information and an accounting that is not otherwise available even to the Claimant Trust Beneficiaries. To be clear, the Plaintiffs are asking this court to disregard the unambiguous and plain terms of the CTA and the Plan and grant the relief sought in Count I based upon equitable considerations.

Ignoring for a moment the Defendants’ Rule 12(b)(6) “failure to state a claim upon which relief may be granted” argument, this court will first focus on Defendants’ argument that Plaintiffs’ claim for equitable relief in Count I is moot and, thus, nonjusticiable and must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

Highland and the Claimant Trust take the position that their filing of the Pro Forma Adjusted Balance Sheet in July 2023, nearly two months after the filing of the Complaint on May 10, 2023, renders moot the Plaintiffs’ request for equitable relief in Count I because the balance sheet provided Plaintiffs (and all parties) with the very information Plaintiffs are asking for in Count I. Thus, “the issue presented in Count I is no longer ‘live.’”<sup>65</sup> Highland and the Claimant Trust add that the Post-Confirmation Reports, filed on the bankruptcy court docket in April 2023, prior to the Complaint being filed, “similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets.” In essence, Defendants argue that the filing of these two items “ha[s] thus eliminated the ‘actual controversy’ at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided.”<sup>66</sup>

Plaintiffs argue that Highland and the Claimant Trust’s mootness argument is exactly backward—that the filing of the Pro Forma Balance Sheet has not eliminated the “actual

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<sup>65</sup> MTD Brief ¶ 25.

<sup>66</sup> MTD Brief ¶¶ 25-26.

controversy” between the parties precisely *because of* the Defendants’ persistent “contentions and arguments that the Balance Sheet is not conclusive [as to the issue of whether Plaintiffs’ Contingent Trust Interests are likely to vest]” – that whether assets exceed liabilities at any one given point in time and whether Plaintiffs appear to be “in the money” is irrelevant to the question of vesting under the terms of the Plan and CTA.<sup>67</sup> Plaintiffs point out that Defendants have argued that Plaintiffs should not rely on the balance sheet, which, again, gives pro forma values as of May 31, 2023, adding that it is not determinative of whether Plaintiffs Contingent Trust Interests will likely vest at any point in the future because, under the terms of the CTA and Plan, Plaintiffs’ unvested, contingent interests in the Claimant Trust will vest if, and only if, the Claimant Trustee files the GUC Payment Certification, certifying that the Class 8 general unsecured claims and Class 9 subordinated claims, the Claimant Trust Beneficiaries under the CTA who are entitled to distributions of the Claimant Trust assets and have other rights under the terms of the CTA, have been indefeasibly paid in full (including as to Class 8, accrued and unpaid post-petition interest), all disputed claims in Classes 8 and 9 have been resolved, *and* certain other obligations – primarily, the Claimant Trust’s significant indemnity obligations – have been satisfied. Because it is impossible to know or predict, in particular, what the indemnity obligations and the professional fees will be going forward, it would be just as impossible for the court to make any determination of whether Plaintiffs are “in the money” or whether their contingent interests are likely to vest.

This court cannot conclude that Defendants’ production and filing of the point-in-time Pro Forma Balance Sheet (as of May 31, 2023) and the Post-Confirmation Reports has rendered Plaintiffs’ current request in Count I for information and an accounting moot. A balance sheet and financial disclosures generally are fluid concepts. Relevant information in early 2023 may not

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<sup>67</sup> See Response ¶¶ 17-18.

remain relevant in mid-2024. Thus, Plaintiffs' equitable claim is not mooted by these earlier filed items, and the Count I request is justiciable. Accordingly, Defendants' motion to dismiss Count I under Rule 12(b)(1) for lack of subject matter jurisdiction will be denied. This determination simply means that the court has subject matter jurisdiction here to address Count I. Thus, this court will now consider whether Plaintiffs have stated a claim (in Count I) upon which relief can be granted under Rule 12(b)(6) standards.

**b) Plaintiffs have failed to state a claim upon which relief can be granted in Count I; dismissal of Count I is proper under Rule 12(b)(6).**

As noted above, dismissal under Rule 12(b)(6) is proper if, based upon the facts alleged in the Complaint, taken as true, as well as any judicially noticed facts, "it appears certain that the [Plaintiffs] cannot prove any set of facts that would entitle [them] to the relief [they] seek[ ]." *Test Masters*, 428 F.3d at 570 (quoting *C.C. Port, Ltd.*, 61 F.3d at 289). As noted above, in Count I, Plaintiffs, as holders of unvested contingent interests in the Claimant Trust, seek an order from this court compelling Defendants "to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets," and a detailed accounting of "all transactions that have occurred since [an alleged] wall of silence was erected, and all liabilities." As also noted above, Plaintiffs have acknowledged<sup>68</sup> that their contingent interests in the Claimant Trust have not vested, and Plaintiffs are not Claimant Trust Beneficiaries; thus, under the terms of the CTA, they are not entitled to the information and accounting they seek and do not have even the limited information rights afforded to the Claimant Trust Beneficiaries under the CTA.<sup>69</sup>

The court takes judicial notice of its Order Denying Leave to Bring Claims Pertaining to Claims Trading, in which the court found that HMIT, as a holder of a "Contingent Claimant Trust

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<sup>68</sup> See *supra* p.10.

<sup>69</sup> See *supra* pp. 7-9 (discussion of information rights under the terms of the CTA).

Interest” was not a Claimant Trust Beneficiary, who, under the terms of the CTA and Delaware law, are the “beneficial owners” of the Claimant Trust, and rejected HMIT’s argument that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which, in turn, makes it a present “beneficial owner” under Delaware trust law.<sup>70</sup> The court concluded that, under Delaware Trust law, “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple” and that under the terms of the CTA, the holders of Contingent Trust Interests have no rights under the agreement and will not “be deemed ‘Beneficiaries’” under the CTA “‘unless and until’ they vest in accordance with the Plan and the CTA” and that “the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested based on HMIT’s unsupported allegation of wrongdoing on the part of . . . the Claimant Trustee.”<sup>71</sup>

Now, as before, the court finds and concludes that under the terms of the CTA and Delaware law, Plaintiffs are not beneficiaries or “beneficial owners” of the Claimant Trust who would be entitled to assert rights under the CTA. The court specifically rejects an argument of Plaintiffs that Delaware trust law does not define “beneficiary,” so the court should ignore the terms of the CTA and look to the definition of “beneficiary” under the Restatement (Third) of Trusts, under which they would be considered “beneficiaries” of the Claimant Trust, albeit a contingent beneficiary, who would be entitled under Delaware law to the relief they are requesting. The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act (the “Trust Act,” Chapter 38 of Title 12 of the Delaware Code), and the Trust Act does define “beneficial owner” and uses that term exclusively to refer to the beneficiaries of a Delaware statutory trust. Specifically, under the Trust Act, a statutory trust’s “beneficial owners” are “any

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<sup>70</sup> Order Denying Leave, 77-78.

<sup>71</sup> *Id.*, 78.

owner[s] of a beneficial interest in a statutory trust, the fact of ownership *to be determined and evidenced . . . in conformity to the applicable provisions of the governing instrument of the statutory trust.*<sup>72</sup> Thus, the question of whether Plaintiffs are “beneficiaries” of the Claimant Trust is (as the court concluded in the Order Denying Leave to Bring Claims Pertaining to Claims Trading) determined “by the CTA itself, pure and simple.” And, under the terms of the CTA, “Claimant Trust Beneficiaries” is defined to exclude Plaintiffs, who hold Class 10 and 11 unvested, contingent interests in the Claimant Trust, unless and until the GUC Payment Certification has been filed by the Claimant Trust. Until then, Plaintiffs “shall not have any rights under [the CTA]” and will not “be deemed ‘Beneficiaries’ under [the CTA].”<sup>73</sup>

Plaintiffs ask the court to ignore the plain terms of the CTA and to grant them the relief they have requested on an equitable basis because they “are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.”<sup>74</sup> But, they have not alleged any set of facts that would entitled them to equitable relief either. The court makes the same observation regarding Plaintiffs as it made in its Order Denying Valuation Motion: It appears that Plaintiffs “may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA.” The Plan with the incorporated CTA was confirmed over three years ago now, and neither of the Plaintiffs objected to or appealed the terms of the Plan or CTA that dictate oversight rights.<sup>75</sup> The Fifth Circuit, in September 2022,

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<sup>72</sup> 12 Del. C. § 3801(a) (emphasis added).

<sup>73</sup> See, e.g., Plan, Art. I.B.44; CTA §§ 1.1(h), 5.1(c).

<sup>74</sup> Complaint ¶ 83.

<sup>75</sup> HMIT did not file an objection to confirmation of the Plan and did not appeal the Confirmation Order. Dugaboy filed an objection to confirmation and appealed the Confirmation Order, but did not object to the terms of the CTA that limited oversight and information rights to “Claimant Trust Beneficiaries” and specifically excluded the holders of the unvested, contingent interests in the Claimant Trust – such as Plaintiffs – from having any rights under the CTA unless and until their interests vested. The CTA was filed prior to the confirmation hearing and Plaintiffs and other parties could have objected to the terms of the Plan or CTA; they could have complained then about any lack of transparency, oversight, and information rights they believe existed under the terms of the CTA. They did not.

affirmed the Confirmation Order and the terms of the Plan and its incorporated documents, including the CTA, in all respects other than striking certain exculpations. *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419 (5th Cir. 2022). As was the case when the court entered its Order Denying Leave to Bring Claims Pertaining to Claims Trading, “[i]t is undisputed that HMIT’s [and Dugaboy’s] Contingent Trust Interest[s] ha[ve] not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s [and Dugaboy’s] Contingent Trust Interest[s] to be vested.”<sup>76</sup> The court did not have that power back in August 2023 (when it entered the Order Denying Leave to Bring Claims Pertaining to Claims Trading), and the court does not have that power now. Equitable relief is not available where, as here, the parties’ rights and obligations at issue are set forth in the Plan and the CTA. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court’s denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate “cannot be rewritten on equitable grounds,” and noting “[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms.”).

Plaintiffs’ make an argument that an implied covenant of good faith and fair dealing under Delaware law necessarily means that the terms of the CTA that govern the parties’ rights, here, including the information rights and rights to an accounting from the Claimant Trustee that Plaintiffs are seeking in Count I, can be overridden here. The court disagrees. Courts will not use the implied covenant of good faith to override the rights and responsibilities that were bargained for in a trust agreement. *See IKB Int’l S.A. v. Wilmington Trust Co.*, 774 F. App’x 719, 727-28 (3d

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<sup>76</sup> Order Denying Leave to Bring Claims Pertaining to Claims Trading, 78.

Cir. 2019)(citing *Homan v. Turoczy*, 2005 WL 2000756 (Del. Ch. Aug. 12, 2005)); *see also Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) (“Existing contract terms control such that implied good faith cannot be used to circumvent the parties’ bargain or to create a free-floating duty unattached to the underlying legal document.”) (cleaned up); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1143 (Del. 1990) (holding that the “subjective standards [of good faith and fair dealing] cannot override the literal terms of an agreement.”) (citation omitted). Because the terms of the CTA expressly address the Claimant Trustee’s duties to provide, and parties’ rights to receive, information and an accounting with respect to the Claimant Trust, and those duties do not inure to the benefit of the Plaintiffs, who are not Claimant Trust Beneficiaries, the implied covenant of good faith and fair dealing cannot be used by the Plaintiffs or the court to compel the Claimant Trustee to disclose the information or provide the accounting as requested in Count I.

After considering the facts alleged in the Complaint, taken as true, and the facts and record of which the court has taken judicial notice, the court has determined that Plaintiffs cannot prove any set of facts that would entitle them to the relief they seek. Thus, dismissal of their claim for disclosure of additional information and for an accounting in Count I under Rule 12(b)(6) is proper.

## 2. Count II – Request for Declaratory Relief

In Count II of the Complaint, Plaintiffs seek a declaratory judgment and “determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations,” but this is only if “Defendants are compelled to provide information about the Claimant Trust assets” – in other words, this Count II request is conditioned on the court granting the equitable relief Plaintiffs seek in Count I.<sup>77</sup>

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<sup>77</sup> Complaint ¶¶ 89-92.

Defendants seek dismissal of Count II under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Before the court can address Defendants’ Rule 12(b)(6) motion, the court must first determine whether the claim for declaratory relief in Count II is justiciable such that the court has constitutional jurisdiction – subject matter jurisdiction – to consider and rule on the merits of Plaintiffs’ claim.<sup>78</sup> As noted above,<sup>79</sup> Plaintiffs’ request for declaratory relief in Count II is clearly predicated on the court first granting the relief requested in Count I: ordering the Defendants to disclose information about the Claimant Trust assets and liabilities (beyond what is contained in the Pro Forma Balance Sheet) and to provide to Plaintiffs a detailed accounting of all transactions involving the Claimant Trust. The court has concluded that Plaintiffs are not entitled to the information and accounting they have requested in Count I and that Count I should, thus, be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Because Plaintiffs’ request for declaratory relief in Count II is predicated on the court granting the relief requested in Count I and the court has denied that relief, Count II has now been rendered moot or, at least, not ripe such that it is not justiciable. *See American Precision Ammunition, L.L.C. v. City of Mineral Wells*, 90 F.4th 820, 827 (2024) (where the Fifth Circuit affirmed the district court’s Rule 12(b)(1) dismissal of a claim to reinstate an agreement as moot, where plaintiff’s claim was predicated on a finding by the district court that the agreement was valid and

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<sup>78</sup> Even though Defendants did not raise the issue of subject matter jurisdiction with respect to Count II, the court has an independent duty to assure itself that it has subject matter jurisdiction over a claim or cause of action before it addresses the merits of the claim under Rule 12(b)(6). *See supra* pp. 18-19; *see also Abraugh v. Altimus*, 26 F.4th 298, 304 (2022) (federal courts have a “constitutional duty . . . to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.”).

<sup>79</sup> *See supra* note 26.

enforceable, and the Fifth Circuit agreed with the district court that the agreement was unenforceable).<sup>80</sup>

In summary, the court has determined that Defendants’ request for declaratory relief in Count II is not justiciable and, as such, Count II must be dismissed pursuant to Rule 12(h)(3) for lack of subject matter jurisdiction. Anything this court might conclude with respect to Defendants’ motion to dismiss Count II under Rule 12(b)(6) would be an impermissible advisory opinion, so the court will not address Defendants’ arguments that Count II should be dismissed for failure to state a claim upon which relief can be granted.

### 3. Count III – Request for Declaratory Relief

In Count III of the Complaint, Plaintiffs seek a declaratory judgment and determination, “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid . . . that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”<sup>81</sup>

Defendants argue that the court should dismiss Count III under Rule 12(b)(1) for lack of subject matter jurisdiction on the basis that their request for declaratory relief in Count III is not justiciable because it is moot and otherwise seeks an impermissible advisory opinion. Defendants also argue that, if the court determines that it does have subject matter jurisdiction over Plaintiff’s claim for declaratory relief in Count III, Count III should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted, including on the ground that Plaintiffs

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<sup>80</sup> Although Defendants did not argue in their briefing that Count II was not justiciable and so must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, in so many words, Defendants did argue during oral argument that “Count II must . . . be dismissed because it depends on Highland being ‘compelled to provide information about the Claimant Trust assets.’ . . . So if the Court doesn’t compel Highland, the Court has no ability to make the declaration that’s sought.” Feb. 14, 2024 Hrg. Trans., 17:9-13.

<sup>81</sup> *Id.* ¶¶ 93-95, at 27.

are collaterally estopped from asserting the claim for declaratory relief in Count III. The court agrees with Defendants that Count III is not justiciable and that Count III should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, and, thus, the court does not have jurisdiction to issue any pronouncement regarding the merits of Plaintiffs' claim for declaratory relief in Count III (and so it will not address Defendants' motion to dismiss pursuant to Rule 12(b)(6) with respect to Count III).

Similar to Plaintiffs' request for declaratory relief in Count II, Plaintiffs' request for declaratory relief in Count III is a contingent request – this one being predicated on the court first granting the declaratory relief in Count II, which, itself, is predicated on the court granting the equitable relief requested in Count I. Because Counts I and II are being dismissed for failure to state a claim and lack of subject matter jurisdiction, respectively, Plaintiffs' claim for declaratory relief in Count III is, thus, rendered not justiciable. That Counts II and III fall, if Count I falls, is inherent in the way Plaintiffs framed their claims and causes of action in the Complaint. Because Plaintiffs are not entitled to the information and accounting they are requesting in Count I, Plaintiffs' claims for declaratory relief in Counts II and III are rendered moot and/or not ripe and, thus, not justiciable. Plaintiffs' request for a declaratory judgment in Count III is not ripe for adjudication for the additional reason that Plaintiffs are asking the court to issue an opinion based on a set of “hypothetical, conjectural, conditional” facts “or based upon the possibility of a factual situation that may never develop” – the “likely” vesting of Plaintiffs' contingent interests in the Claimant Trust, making them Claimant Trust Beneficiaries. This is something federal courts are not permitted to do, even in the context of a request for declaratory relief (as is the case here with

Counts II and III).<sup>82</sup> The court finds and concludes that Plaintiffs' claim for declaratory relief in Count III is not justiciable and thus must be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

This being the case, the court, as it must, declines to address the merits of whether Count III should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted (including based on Defendants' collateral estoppel argument).

Accordingly,

**IT IS ORDERED** that Defendants' Motion to Dismiss Count I of the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), be, and hereby is, **DENIED**;

**IT IS FURTHER ORDERED** that Plaintiffs have failed to state a claim upon which relief can be granted in Count I of the Complaint, and thus Count I of the Complaint is **DISMISSED** pursuant to Rule 12(b)(6);

**IT IS FURTHER ORDERED** that Count II of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1) and Rule 12(h)(3), Count II of the Complaint is **DISMISSED** for lack of subject matter jurisdiction;

**IT IS FURTHER ORDERED** that Count III of the Complaint is not justiciable and that, pursuant to Rule 12(b)(1), Count III of the Complaint is **DISMISSED** for lack of subject matter jurisdiction.

**###End of Memorandum Opinion and Order###**

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<sup>82</sup> See *Val-Com Acquisitions*, 434 F. App'x at 395-96; see also *Boyd Veigel*, 575 F. App'x at 396 (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)) (where the Fifth Circuit discusses the ripeness doctrine in the context of declaratory judgment actions and states that "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.").

**DISMISSED, APPEAL**

**U.S. Bankruptcy Court  
Northern District of Texas (Dallas)  
Adversary Proceeding #: 23-03038-sgj**

*Assigned to:* Chief Bankruptcy Jud Stacey G Jernigan  
*Lead BK Case:* 19-34054  
*Lead BK Title:* Highland Capital Management, L.P.  
*Lead BK Chapter:* 11  
*Demand:*

*Nature[s] of Suit:* 91 Declaratory  
judgment

*Date Filed:* 05/10/23  
*Date Dismissed:* 05/24/24

***Plaintiff***  
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**LEAD ATTORNEY**

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***Plaintiff***  
-----

**Hunter Mountain Investment Trust**

represented by **Michael P. Aigen**  
(See above for address)  
**LEAD ATTORNEY**

**Deborah Rose Deitsch-Perez**  
(See above for address)

V.

***Defendant***  
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*Defendant*

-----  
**Highland Claimant Trust**

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 (See above for address)

**Gregory V. Demo**  
 (See above for address)

**John A Morris**  
 (See above for address)

**Jeffrey Nathan Pomerantz**  
 (See above for address)

**Hayley R Winograd**  
 (See above for address)

Filing Date	Docket Text
05/10/2023	<p><u>1</u> Adversary case 23-03038. Complaint by Dugaboy Investment Trust, Hunter Mountain Investment Trust against Highland Capital Management, L.P. and Highland Claimant Trust. Fee Amount \$350. Nature(s) of suit: 91 (Declaratory judgment). (Deutsch-Perez, Deborah) Modified text to add defendant on 5/11/2023 (Okafor, Marcey).</p>
05/10/2023	

	Receipt of filing fee for Complaint( <del>23-03038-sgi</del> ) [cmp,cmp] ( 350.00). Receipt number A30393902, amount \$ 350.00 (re: Doc# <u>1</u> ). (U.S. Treasury)
05/11/2023	<u>2</u> Notice of deficiency. Adversary Cover Sheet due 5/13/2023. (Okafor, Marcey) Modified deadline due date on 5/11/2023 (Okafor, Marcey).
05/11/2023	<u>3</u> Summons issued on Highland Capital Management, L.P., Answer Due 6/12/2023; & Highland Claimant Trust Answer Due 6/12/2023; (Edmond, Michael)
05/11/2023	<u>4</u> Scheduling order setting deadlines. Discovery and all exhibits except impeachment documents: 45 days prior to Docket Call, pre-trial order: 7 calendar days prior to Docket Call, proposed findings of fact and conclusions of law: 7 days prior to first scheduled docket call (RE: related document(s) <u>1</u> Complaint filed by Plaintiff Dugaboy Investment Trust, Plaintiff Hunter Mountain Investment Trust). Trial Docket Call date set for 11/13/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . Trial will be held during the week of 11/20/2023. Entered on 5/11/2023 (Edmond, Michael)
05/16/2023	<u>5</u> INCORRECT ENTRY: Adversary proceeding cover sheet filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>1</u> Complaint, <u>2</u> Notice of deficiency). (Deutsch-Perez, Deborah) Modified on 5/17/2023 (Ecker, C.).
05/17/2023	<u>6</u> Adversary proceeding cover sheet filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>1</u> Complaint). (Deutsch-Perez, Deborah)
11/13/2023	<u>7</u> Stipulation by Highland Capital Management, L.P., Highland Claimant Trust and The Dugaboy Investment Trust and Hunter Mountain Investment Trust. filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s) <u>1</u> Complaint). (Annable, Zachery)
11/16/2023	<u>8</u> Notice of Appearance and Request for Notice by Jeffrey Nathan Pomerantz filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust. (Pomerantz, Jeffrey)
11/16/2023	<u>9</u> Notice of Appearance and Request for Notice by John A Morris filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust. (Morris, John)
11/16/2023	<u>10</u> Notice of Appearance and Request for Notice by Gregory V. Demo filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust. (Demo, Gregory)
11/16/2023	<u>11</u> Notice of Appearance and Request for Notice by Hayley R Winograd filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust. (Winograd, Hayley)
11/21/2023	<u>12</u> Order approving stipulation and proposed scheduling order (RE: related document(s) <u>7</u> Stipulation filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). Entered on 11/21/2023 (Okafor, Marcey)
11/22/2023	<u>13</u> Motion to dismiss adversary proceeding <i>The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs Interest in the Claimant Trust</i> filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
11/22/2023	<u>14</u> Brief in support filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding <i>The</i>

	<i>Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plainti). (Annable, Zachery)</i>
11/23/2023	<u>15</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>12</u> Order approving stipulation and proposed scheduling order (RE: related document(s) <u>7</u> Stipulation filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). Entered on 11/21/2023) No. of Notices: 0. Notice Date 11/23/2023. (Admin.)
12/22/2023	<u>16</u> Stipulation by Dugaboy Investment Trust, Hunter Mountain Investment Trust and Highland Capital Management, L.P. and Highland Claimant Trust. filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding <i>The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plainti). (Attachments: # <u>1</u> Proposed Order) (Deutsch–Perez, Deborah)</i>
12/29/2023	<u>17</u> Response opposed to (related document(s): <u>13</u> Motion to dismiss adversary proceeding <i>The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plainti</i> filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust) filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust. (Deutsch–Perez, Deborah)
12/29/2023	<u>18</u> Support/supplemental document <i>Appendix in Support of Response to Motion to Dismiss</i> filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding <i>The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plainti). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Deutsch–Perez, Deborah)</i>
01/03/2024	<u>19</u> Notice of hearing filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). Hearing to be held on 2/14/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>13</u> , (Annable, Zachery)
01/15/2024	<u>20</u> Certificate of service re: 1) The Highland Parties Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs Interests in the Claimant Trust; 2) Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trusts Motion to Dismiss Complaint; 3) Notice of Hearing re: The Highland Parties Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs Interests in the Claimant Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>13</u> Motion to dismiss adversary proceeding <i>The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs Interest in the Claimant Trust</i> filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (Attachments: # 1 Exhibit A) filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust, <u>14</u> Brief in support filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding <i>The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plainti). filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust, <u>19</u> Notice of hearing filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s)<u>13</u> Motion to dismiss adversary proceeding filed by Defendant Highland</i>

	<i>Capital Management, L.P., Defendant Highland Claimant Trust). Hearing to be held on 2/14/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>13</u>, filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). (Kass, Albert)</i>
01/19/2024	<u>21</u> Reply to (related document(s): <u>17</u> Response filed by Plaintiff Dugaboy Investment Trust, Plaintiff Hunter Mountain Investment Trust) ( <i>The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint</i> ) filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust. (Annable, Zachery)
01/26/2024	<u>22</u> Certificate of service re: The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>21</u> Reply to (related document(s): <u>17</u> Response filed by Plaintiff Dugaboy Investment Trust, Plaintiff Hunter Mountain Investment Trust) ( <i>The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint</i> ) filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust. filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). (Kass, Albert)
02/14/2024	<u>23</u> Request for transcript regarding a hearing held on 2/14/2024. The requested turn-around time is 7-day expedited. (Edmond, Michael)
02/14/2024	<u>24</u> Hearing held on 2/14/2024. (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs Interest in the Claimant Trust filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (Attachments: # 1 Exhibit A) filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust) (Appearances: J. Morris for Reorganized Debtor/Movant; D. Deitsch-Perez for Plaintiffs/Respondents. Nonevidentiary hearing. Court took matter under advisement.) (Edmond, Michael) (Entered: 02/20/2024)
02/20/2024	<u>25</u> Transcript regarding Hearing Held 02/14/2024 Before Judge Stacey G.C. Jernigan (73 pages) RE: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust <u>13</u> . THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/20/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>24</u> Hearing held on 2/14/2024. (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs Interest in the Claimant Trust filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (Attachments: # 1 Exhibit A) filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust) (Appearances: J. Morris for Reorganized Debtor/Movant; D. Deitsch-Perez for Plaintiffs/Respondents. Nonevidentiary hearing. Court took matter under advisement.)). Transcript to be made available to the public on 05/20/2024. (Rehling, Kathy)
05/24/2024	<u>26</u> Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). Entered on 5/24/2024 (Okafor, Marcey) Modified text on 5/24/2024 (Okafor, Marcey).
05/24/2024	<u>27</u> Order granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets (related document # <u>13</u> ) Entered on 5/24/2024. (Okafor, Marcey)

05/26/2024	<u>28</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>26</u> Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post–confirmation valuation of Trust assets (RE: related document(s) <u>13</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). Entered on 5/24/2024 (Okafor, Marcey) Modified text on 5/24/2024 .) No. of Notices: 0. Notice Date 05/26/2024. (Admin.)
05/26/2024	<u>29</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>27</u> Order granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post–confirmation valuation of Trust assets (related document <u>13</u> ) Entered on 5/24/2024.) No. of Notices: 0. Notice Date 05/26/2024. (Admin.)
06/07/2024	<u>30</u> Notice of appeal . Fee Amount \$298 filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>26</u> Memorandum of opinion). Appellant Designation due by 06/21/2024. (Attachments: # <u>1</u> Exhibit A)(Deitsch–Perez, Deborah)
06/07/2024	Receipt of filing fee for Notice of appeal( <u>23–03038–sgi</u> ) [appeal,ntcapl] ( 298.00). Receipt number A31488085, amount \$ 298.00 (re: Doc# <u>30</u> ). (U.S. Treasury)
06/20/2024	<u>32</u> Certificate of mailing regarding appeal (RE: related document(s) <u>30</u> Notice of appeal . filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>26</u> Memorandum of opinion). Appellant Designation due by 06/21/2024. (Attachments: # 1 Exhibit A)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
06/20/2024	<u>33</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>30</u> Notice of appeal . filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>26</u> Memorandum of opinion). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
06/20/2024	<u>34</u> Notice of docketing notice of appeal. Civil Action Number: 3:24–cv–01531–X. (RE: related document(s) <u>30</u> Notice of appeal . Fee Amount \$298 filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>26</u> Memorandum of opinion). Appellant Designation due by 06/21/2024. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
06/21/2024	<u>35</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>30</u> Notice of appeal). Appellee designation due by 07/8/2024. (Deitsch–Perez, Deborah)
06/22/2024	<u>36</u> BNC certificate of mailing. (RE: related document(s) <u>33</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>30</u> Notice of appeal . filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust (RE: related document(s) <u>26</u> Memorandum of opinion). (Attachments: # 1 Exhibit A))) No. of Notices: 0. Notice Date 06/22/2024. (Admin.)
07/08/2024	<u>37</u> Appellee designation of contents for inclusion in record of appeal ( <i>Appellees' Supplemental Designation of Record on Appeal</i> ) filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s) <u>30</u> Notice of appeal). (Annable, Zachery)
07/17/2024	<u>38</u> Certificate of service re: <i>Appellees Supplemental Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s) <u>37</u> Appellee designation of contents for inclusion in record of appeal ( <i>Appellees' Supplemental Designation of Record on Appeal</i> ) filed by Defendants Highland Capital Management, L.P., Highland Claimant Trust (RE: related document(s) <u>30</u> Notice of

appeal). filed by Defendant Highland Capital Management, L.P., Defendant Highland Claimant Trust). (Kass, Albert)

SEALEDEXH, 5thCircuitAppeal, APPEAL, SealedDocument, FUNDS, TRANSIN, REFORM, ClaimsAgent, EXHIBITS, COMPLEX

**U.S. Bankruptcy Court  
Northern District of Texas (Dallas)  
Bankruptcy Petition #: 19-34054-sgj11**

*Assigned to:* Chief Bankruptcy Jud Stacey G Jernigan  
Chapter 11  
Voluntary  
Asset  
Show Previous Cases

*Date filed:* 10/16/2019  
*Date Plan Confirmed:* 02/22/2021  
*Date transferred:* 12/04/2019  
*Plan confirmed:* 02/22/2021  
*341 meeting:* 01/09/2020  
*Deadline for filing claims:* 04/08/2020  
*Deadline for filing claims (govt.):* 04/13/2020

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Filing Date	Docket Text
12/04/2019	<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)
12/04/2019	<u>2</u> DOCKET SHEET filed in 19-12239 in the U.S. Bankruptcy Court for Delaware . (Okafor, M.)
12/04/2019	<u>3</u> Chapter 11 Voluntary Petition . Fee Amount \$1717. Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Creditor Matrix) [ORIGINALLY FILED AS DOCUMENT #1 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>4</u> Motion to Pay Employee Wages /Motion of the Debtors for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #2 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	

	<u>5</u> Motion to Pay Critical Trade Vendor Claims /Motion of the Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #3 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>6</u> Motion to Extend Deadline to File Schedules or Provide Required Information Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #4 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>8</u> <b>**WITHDRAWN**</b> – 10/29/2019. SEE DOCKET # 72. Motion to Approve Use of Cash Collateral /Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Order)(O'Neill, James) Modified on 10/30/2019 (DMC)[ORIGINALLY FILED AS DOCUMENT #6 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>9</u> Application to Appoint Claims/Noticing Agent KURTZMAN CARSON CONSULTANTS, LLC Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Engagement Agreement # <u>2</u> Exhibit B – Gershbein Declaration # <u>3</u> Exhibit C – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #7 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>10</u> Motion to File Under Seal/Motion of the Debtor for Entry of Interim and Final Orders Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #8 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>11</u> Affidavit/Declaration in Support of First Day Motion /Declaration of Frank Waterhouse in Support of First Day Motions Filed By Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #9 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>12</u> Notice of Hearing on First Day Motions (related document(s)2, 3, 5, 6, 7, 8, 9 [ON DELAWARE DOCKET]) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #11 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>13</u> Notice of Hearing // Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by

	Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Exhibit A) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #12 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>14</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #13 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>15</u> Notice of appearance Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #14 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>16</u> Motion to Appear pro hac vice of Marshall R. King of Gibson, Dunn & Crutcher LLP. Receipt Number 2757354, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #15 ON 10/1/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>17</u> Motion to Appear pro hac vice of Michael A. Rosenthal of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #16 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>18</u> Motion to Appear pro hac vice of Alan Moskowitz of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) ) [ORIGINALLY FILED AS DOCUMENT #17 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>19</u> Motion to Appear pro hac vice of Matthew G. Bouslog of Gibson, Dunn & Crutcher LLP. Receipt Number 2581894, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #18 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>20</u> Notice of Appearance and Request for Notice by Louis J. Cisz filed by Interested Party California Public Employees Retirement System (CalPERS) . (Okafor, M.) [ORIGINALLY FILED AS DOCUMENT #19 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>21</u> Motion to Appear pro hac vice (Jeffrey N. Pomerantz). Receipt Number 2564620, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #20 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>22</u> Motion to Appear pro hac vice (Maxim B. Litvak). Receipt Number 2564620, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>23</u> Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE

	DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>24</u> Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>25</u> Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>26</u> Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>27</u> Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>28</u> Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>29</u> Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>30</u> Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>31</u> Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>32</u> Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>33</u> Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>34</u> Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	

	<u>35</u> Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>36</u> Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>37</u> Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>38</u> Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>39</u> Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>40</u> Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # <u>1</u> Agreement)) (NAB) Modified Text on 10/21/2019 (LB) [ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>41</u> Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	<u>42</u> Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>43</u> Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>44</u> Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>45</u> Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County , Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	<u>46</u> Notice of hearing/ <i>scheduling conference</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	<u>47</u> Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s) <u>2</u> , <u>39</u> ) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>48</u> Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (related document(s) <u>7</u> , <u>43</u> ) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.).
12/04/2019	<u>49</u> Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s) <u>4</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # <u>1</u> Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>50</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s) <u>3</u> , <u>40</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>51</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s) <u>5</u> , <u>42</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>52</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (related

	document(s)8, 44) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>53</u> Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # <u>1</u> Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>54</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo [Docket No. 32]; (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)
12/04/2019	<u>55</u> Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # <u>1</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>56</u> Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>57</u> Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>58</u> Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>59</u> Notice of Appearance and Request for Notice by Michael I. Baird filed by Interested Party Pension Benefit Guaranty Corporation . (Attachments: # <u>1</u> Certification of United States Government Attorney # <u>2</u> Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>60</u> Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>61</u> Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>62</u> Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>63</u> Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>64</u> Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>65</u> Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>66</u> Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>67</u> Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Form of Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S.

	BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A # <u>3</u> Exhibit B # <u>4</u> Exhibit C – Proposed Order # <u>5</u> 2016 Statement # <u>6</u> Declaration Frank Waterhouse # <u>7</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>69</u> **WITHDRAWN per #437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Hurst Declaration # <u>3</u> Exhibit B – Proposed Order # <u>4</u> 2016 Statement # <u>5</u> Declaration Frank Waterhouse # <u>6</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>70</u> Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # <u>1</u> Notice # <u>2</u> Rule 2016 Statement # <u>3</u> Declaration of Jeffrey N. Pomerantz in Support # <u>4</u> Declaration of Frank Waterhouse # <u>5</u> Proposed Form of Order # <u>6</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Main Document 70 replaced on 2/16/2022) (Okafor, Marcey). Additional attachment(s) added on 2/16/2022 (Okafor, Marcey). (Entered: 12/05/2019)
12/04/2019	<u>71</u> Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>72</u> Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>73</u> Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Gershbein Declaration # <u>4</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>74</u> Application/Motion to Employ/Retain Development Specialists, Inc. as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Engagement Letter # <u>3</u> Exhibit B – Sharp Declaration # <u>4</u> Exhibit C – Proposed Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – OCP List # <u>4</u> Exhibit C – Form of Declaration of Disinterestedness # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>76</u> **WITHDRAWN by # <u>360</u> ** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Appendix I # <u>3</u> Appendix II # <u>4</u> Proposed Form of Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>77</u> Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>78</u> Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>79</u> Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311-27677. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>80</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>81</u> Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>82</u> Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>83</u> Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>84</u> Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # <u>1</u> Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>85</u> Motion to Change Venue/Inter-district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E – Certificate of Service) (Guzina, Bojan)[ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>86</u> Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>87</u> Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>88</u> Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>89</u> Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>90</u> Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>91</u> Notice of Appearance. The party has consented to electronic service. Filed by INTEGRATED FINANCIAL ASSOCIATES, INC. (Carlyon, Candace) [ORIGINALLY FILED AS DOCUMENT #92 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>92</u> Order Approving Motion for Admission pro hac vice Patrick C. Maxcy(Related Doc # 90) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #93 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>93</u> Order Approving Motion for Admission pro hac vice Lauren Macksoud(Related Doc # 91) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #94 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>94</u> HEARING CANCELLED. Notice of Agenda of Matters not going forward. The following hearing has been cancelled. Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #95 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>95</u> Notice of Appearance. The party has consented to electronic service. Filed by BET Investments, II, L.P.. (Attachments: # <u>1</u> Certificate of Service) (Kurtzman, Jeffrey) (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #96 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>96</u> Certification of Counsel Regarding Order Scheduling Omnibus Hearing Date Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Proposed Form of Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #97 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>98</u> Order Scheduling Omnibus Hearings. Omnibus Hearings scheduled for 12/17/2019 at 11:00 AM US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Signed on 11/7/2019. (CAS) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #98 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>101</u> Exhibit(s) // Notice of Filing of Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #99 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>102</u> Affidavit/Declaration of Service for service of [Signed] Order Scheduling Omnibus Hearing Date [Docket No. 98] (related document(s)98) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #100 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>103</u> Notice of Deposition – Notice to Take Rule 30(b)(6) Deposition Upon Oral Examination of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>104</u> Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

	(Entered: 12/05/2019)
12/04/2019	<u>106</u> Notice of Service – Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>107</u> Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # <u>1</u> Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>108</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>110</u> Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>111</u> Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>112</u> Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>113</u> Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>114</u> Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>115</u> Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>116</u> Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>117</u> Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF

	DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>118</u> Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>119</u> Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>120</u> Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>121</u> Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # <u>1</u> Exhibit A # <u>2</u> Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>122</u> Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>123</u> Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>124</u> **WITHDRAWN per # <u>456</u> ** Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>125</u> Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>126</u> Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>128</u> [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>130</u> Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>131</u> Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>132</u> Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>133</u> Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>134</u> Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN

	U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>135</u> Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # <u>1</u> Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>136</u> Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>137</u> Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>138</u> Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>139</u> Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>140</u> Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>141</u> ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>142</u> ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>143</u> ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENT OF FINANCIAL AFFAIRS, AND (II) GRANTING RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>144</u> Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>145</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>146</u> Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>147</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>148</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s)136, 137, 138) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>149</u> Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>150</u> Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>151</u> Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED

	AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>152</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>153</u> Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>154</u> Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta-e Discovery, LLC . (Moldovan, Joseph)[ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>156</u> Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>158</u> Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311-27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>159</u> Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>162</u> Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>163</u> Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>164</u> Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #158 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>165</u> Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and

	<p>Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Nunc Pro Tunc to Petition Date (related document(s)69, 70, 116, 120) Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #159 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)</p>
12/04/2019	<p><u>166</u> Omnibus Reply of the Debtor in Support of: (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)5, 75, 77) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Redline Order Approving Ordinary Course Protocols Motion # <u>2</u> Exhibit B – Redline Order Approving Cash Management Motion # <u>3</u> Exhibit C – Redline Order Approving DSI Retention Motion # <u>4</u> Exhibit D – Summary of Intercompany Transactions) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #160 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>168</u> Certificate of Service of 1) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue; 2) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date, and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP; and 3) Omnibus Reply of the Debtor in Support of: (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)158, 159, 160) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #161 ON 11/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>169</u> Exhibit(s) // Notice of Filing of Second Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #162 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>170</u> Certification of Counsel Regarding Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P..(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #163 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>171</u> <b>**WITHDRAWN**</b> – 11/26/2019. SEE DOCKET # 165. Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) Modified on 11/26/2019 (DMC). [ORIGINALLY FILED AS DOCUMENT #164 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>172</u> Notice of Withdrawal of Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)164) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS</p>

	DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>173</u> Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>174</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>175</u> FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>178</u> Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014–1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE(Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>179</u> Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014–1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Declaration of John Dempsey in Support # <u>4</u> Exhibit C – Highland Key Employee Incentives # <u>5</u> Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>181</u> Certificate of Service and Service List for service of Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief [Docket No. 170] (related document(s)170) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #174 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>182</u> Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)167) Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #175 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>183</u> ORDER PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, RULE 2414 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL RULE 2014-1 AUTHORIZING THE EMPLOYMENT AND RETENTION OF PACHULSKI TANG ZIEHL & JONES LLP AS COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 71) Order Signed on 12/2/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #176 ON 12/02/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>184</u> Certification of Counsel Regarding Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #182 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>185</u> Affidavit/Declaration of Service for service of (1) [Signed] Final Order (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 168]; (2) [Signed] Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [Docket No. 169]; and (3) [Signed] Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date [Docket No. 176] (related document(s)168, 169, 176) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #183 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>186</u> ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (related document(s)86) Order Signed on 12/4/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #184 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

	<u>187</u> Certificate of Service re: 1) Notice of Chapter 11 Bankruptcy Case; and 2) [Corrected] Notice of Chapter 11 Bankruptcy Case (related document(s)67, 79) Filed by Kurtzman Carson Consultants LLC. (Kass, Albert) ( [ORIGINALLY FILED AS DOCUMENT #185 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/05/2019	<u>97</u> Motion to appear pro hac vice for Bojan Guzina. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228141, amount \$ 100.00 (re: Doc# <u>97</u> ). (U.S. Treasury)
12/05/2019	<u>99</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Wylie ISD, Garland ISD, City of Garland. (Reece, Linda)
12/05/2019	<u>100</u> Motion to appear pro hac vice for Matthew A. Clemente. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	<u>105</u> Motion to appear pro hac vice for Alyssa Russell. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>100</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>105</u> ). (U.S. Treasury)
12/05/2019	<u>109</u> Motion to appear pro hac vice for Ira D. Kharasch. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228644, amount \$ 100.00 (re: Doc# <u>109</u> ). (U.S. Treasury)
12/05/2019	<u>129</u> Notice of Appearance and Request for Notice by Laurie A. Spindler filed by City of Allen, Allen ISD, Dallas County, Grayson County, Irving ISD, Kaufman County, Tarrant County. (Spindler, Laurie)
12/05/2019	<u>155</u> Notice of Appearance and Request for Notice by Mark A. Platt filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Platt, Mark)
12/05/2019	<u>157</u> Motion to appear pro hac vice for Marc B. Hankin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	<u>160</u> Motion to appear pro hac vice for Richard Levin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Addendum) (Platt, Mark)
12/05/2019	<u>161</u> Motion to appear pro hac vice for Terri L. Mascherin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>157</u> ). (U.S. Treasury)

12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>160</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>161</u> ). (U.S. Treasury)
12/05/2019	<u>167</u> Motion to appear pro hac vice for Gregory V. Demo. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27230422, amount \$ 100.00 (re: Doc# <u>167</u> ). (U.S. Treasury)
12/05/2019	<u>188</u> Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/06/2019	<u>189</u> Motion to appear pro hac vice for Jeffrey N. Pomerantz. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27233957, amount \$ 100.00 (re: Doc# <u>189</u> ). (U.S. Treasury)
12/06/2019	<u>190</u> Amended Motion to appear pro hac vice for Jeffrey N. Pomerantz. (related document: <u>189</u> ) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	<u>191</u> Motion to appear pro hac vice for John A. Morris. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27233983, amount \$ 100.00 (re: Doc# <u>191</u> ). (U.S. Treasury)
12/06/2019	<u>192</u> INCORRECT ENTRY – Incorrect Event Used; Refiled as Document <u>220</u> . Motion to withdraw as attorney (Eric T. Haitz) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric) Modified on 12/9/2019 (Dugan, S.). Modified on 12/9/2019 (Dugan, S.).
12/06/2019	<u>193</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s)) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P., (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Edmond, Michael)
12/06/2019	<u>194</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s)) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.) (Edmond, Michael)

12/06/2019	<u>195</u> Request for transcript regarding a hearing held on 12/6/2019. The requested turn-around time is hourly. (Edmond, Michael)
12/06/2019	<u>196</u> Order granting motion to appear pro hac vice adding Bojan Guzina for Official Committee of Unsecured Creditors (related document # <u>97</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document # <u>100</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document # <u>105</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document # <u>109</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document # <u>160</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document # <u>161</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document # <u>167</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document # <u>157</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>204</u> INCORRECT ENTRY: DRAFT OF MOTION. SEE DOCUMENT 206. Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/06/2019	<u>206</u> Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL</i>

	<i>COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u> ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>220</u> Withdrawal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>41</u> Notice of appearance and request for notice). (Dugan, S.) (Entered: 12/09/2019)
12/08/2019	<u>207</u> Transcript regarding Hearing Held 12/6/19 RE: Status and scheduling conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/9/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Palmer Reporting Services, Telephone number PalmerRptg@aol.com, 800-665-6251. (RE: related document(s) 193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , 194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.)). Transcript to be made available to the public on 03/9/2020. (Palmer, Susan)
12/08/2019	<u>208</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document <u>100</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>209</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document <u>105</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>210</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document <u>109</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>211</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document <u>160</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>212</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document <u>161</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	

	<u>213</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document <u>167</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>214</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document <u>157</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/09/2019	<u>215</u> Acknowledgment of split/transfer case received FROM another district, Delaware, Delaware division, Case Number 19–12239. (Okafor, M.)
12/09/2019	<u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document # <u>190</u> ) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document # <u>191</u> ) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # <u>1</u> Declaration # <u>2</u> Proposed Order) (Crooks, David)
12/09/2019	<u>219</u> Notice of Appearance and Request for Notice by Charles Martin Persons Jr. filed by Creditor Committee Official Committee of Unsecured Creditors. (Persons, Charles)
12/09/2019	Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27240994, amount \$ 181.00 (re: Doc# <u>218</u> ). (U.S. Treasury)
12/09/2019	<u>221</u> Notice of Appearance and Request for Notice by Brian Patrick Shaw filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Shaw, Brian)
12/09/2019	<u>222</u> Motion to appear pro hac vice for Dennis M. Twomey. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/09/2019	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 27241671, amount \$ 100.00 (re: Doc# <u>222</u> ). (U.S. Treasury)
12/09/2019	<u>223</u> Certificate of service re: 1) <i>Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019; and 2) [Amended] Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official

	Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u> ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/10/2019	<u>224</u> Certificate Certificate of Conference filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181.). (Crooks, David)
12/10/2019	<u>225</u> Certificate of service re: Certificate of Service filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181., <u>224</u> Certificate (generic)). (Attachments: # <u>1</u> Service List) (Crooks, David)
12/10/2019	<u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney ( <i>Co-Counsel</i> ) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/10/2019	<u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).
12/10/2019	<u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)
12/10/2019	<u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020. (Neary, William)
12/10/2019	<u>230</u> Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/10/2019	<u>231</u> Notice of Appearance and Request for Notice by Zachery Z. Annable filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2019	<u>232</u> Joint Motion to continue hearing on (related documents 194 Hearing held, Hearing set/continued) <i>Joint Motion to Continue Status Conference</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order # <u>2</u> Service List) (Hayward, Melissa)
12/11/2019	<u>233</u> Motion to appear pro hac vice for Michael I. Baird. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Attachments: # <u>1</u> Certificate of Service) (Baird, Michael)

12/11/2019	<u>234</u> Order granting joint motion to continue hearing on (related document # <u>232</u> ) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	<u>236</u> Motion to appear pro hac vice for Lauren Macksoud. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27250084, amount \$ 100.00 (re: Doc# <u>236</u> ). (U.S. Treasury)
12/11/2019	<u>237</u> Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27250165, amount \$ 100.00 (re: Doc# <u>237</u> ). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (0.00). Receipt Number KF – No Fee Due, amount \$ 0.00 (re: Doc <u>233</u> ). (Floyd)
12/11/2019	<u>238</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document <u>190</u> ) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	<u>239</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document <u>191</u> ) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	<u>240</u> Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	<u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/12/2019	<u>242</u> Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # <u>233</u> ) Entered on 12/12/2019. (Okafor, M.)
12/12/2019	<u>243</u> BNC certificate of mailing. (RE: related document(s) <u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)

12/12/2019	<u>244</u> BNC certificate of mailing. (RE: related document(s) <u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/13/2019	<u>245</u> Certificate of service re: <i>1) Application of the Official Committee of Unsecured Creditors to Retain and Employ Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel, Nunc Pro Tunc to November 8, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (Co-Counsel) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/13/2019	<u>246</u> Certificate of service re: <i>1) First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/13/2019	<u>247</u> Schedules: Schedules A/B and D-H with Summary of Assets and Liabilities (with Declaration Under Penalty of Perjury for Non-Individual Debtors.). Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding schedules) (Hayward, Melissa)
12/13/2019	<u>248</u> Statement of financial affairs for a non-individual . Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding SOFA) (Hayward, Melissa)
12/13/2019	<u>249</u> BNC certificate of mailing – meeting of creditors. (RE: related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.) No. of Notices: 8. Notice Date 12/13/2019. (Admin.)
12/13/2019	<u>250</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>234</u> Order granting joint motion to continue hearing on (related document <u>232</u> ) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019.) No. of Notices: 1. Notice Date 12/13/2019. (Admin.)
12/16/2019	<u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document # <u>236</u> ) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	<u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document # <u>237</u> ) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	<u>253</u> Order rescheduling status conference (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Status Conference to be held on 12/18/2019 at 10:30 AM at Dallas Judge Jernigan Ctrm. Entered on 12/16/2019 (Dugan, S.)
12/17/2019	<u>254</u> Notice of Appearance and Request for Notice by Jason Patrick Kathman filed by Creditor Patrick Daugherty. (Kathman, Jason)

12/18/2019	<u>255</u> Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/18/2019	Hearing held on 12/18/2019. (RE: related document(s) <u>1</u> Status/Scheduling Conference; Order transferring case number 19–12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Pomerantz and I. Kharasch for Debtor; M. Hayward, local counsel for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; M. Platt and T. Mascherin and M. Hankin (each telephonically) for Redeemer Committee; L. Spindler for taxing authorities; A. Chiarello and R. Patel (telephonically) for Acis; L. Lambert for UST; P. Maxcy (telephonically) for Jeffries. Nonevidentiary status conference. Court heard reports regarding continued negotiations between Debtor and UCC regarding a proposed management structure for Debtor and ordinary course protocols. Debtor expects to file a motion for approval of same (if agreements reached) by 12/27/19 for a 1/9/20 hearing. Otherwise, UCC will file a motion for a chapter 11 trustee (which, if filed, will be filed 12/30/19 and set 1/20/20–1/21/20). Scheduling order to be submitted. Also, US Trustee announced intention to move for a Chapter 11 Trustee.) (Edmond, Michael)
12/18/2019	<u>256</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document <u>236</u> ) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/18/2019	<u>257</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document <u>237</u> ) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/19/2019	<u>258</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Dechert LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Demo, Gregory)
12/19/2019	<u>259</u> Support/supplemental document to the <i>Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.). (Hayward, Melissa)
12/19/2019	<u>260</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (ASW Law Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/19/2019	<u>261</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/20/2019	<u>262</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
12/20/2019	<u>263</u> Certificate of service re: <i>Supplemental Declaration of Bojan Guzina in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and</i>

	<i>1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">255</a> Declaration re: Supplemental Declaration In Support of filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">206</a> Amended Application to employ Sidley Austin LLP as Attorney APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
12/20/2019	<i><a href="#">264</a> Certificate of service re: Supplement to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">259</a> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">7</a> Motion to maintain bank accounts.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
12/22/2019	<i><a href="#">265</a> Objection to (related document(s): <a href="#">176</a> Document)Limited Objection of The Official Committee of Unsecured Creditors to the Retention of Harder LLP as Ordinary Course Professional filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</i>
12/23/2019	<i><a href="#">266</a> Declaration re: Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">176</a> Document). (Hayward, Melissa)</i>
12/23/2019	<i><a href="#">267</a> Declaration re: Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">176</a> Document). (Hayward, Melissa)</i>
12/23/2019	<i><a href="#">268</a> Declaration re: Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">176</a> Document). (Hayward, Melissa)</i>
12/23/2019	<i><a href="#">269</a> Agreed scheduling Order (RE: related document(s)<a href="#">1</a> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)</i>
12/23/2019	<i><a href="#">270</a> Application for compensation – First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019 for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # <a href="#">1</a> Exhibit A) (O'Neil, Holland)</i>
12/23/2019	<i><a href="#">271</a> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee (Lambert, Lisa)</i>
12/23/2019	<i><a href="#">272</a> Trustee's Objection to Motion to Seal Official Committee's Omnibus Objection and Supporting Exhibits (RE: related document(s)<a href="#">127</a> Document) (Lambert, Lisa)</i>
12/23/2019	<i><a href="#">273</a> Motion for leave to Extend Deadline to Object to Motion for Relief of Stay of PensionDanmark (related document(s) <a href="#">218</a> Motion for relief from stay) Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/6/2020. (Hoffman, Juliana)</i>

12/24/2019	<u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/25/2019	<u>277</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>269</u> Agreed scheduling Order (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)) No. of Notices: 1. Notice Date 12/25/2019. (Admin.)
12/26/2019	<u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim &amp; Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/26/2019	<u>279</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 3) <i>Declaration of Marc D. Katz</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>266</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>267</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>268</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/27/2019	<u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/27/2019	<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Hayward, Melissa)
12/27/2019	<u>282</u> Support/supplemental document to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
12/27/2019	<u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
12/28/2019	<u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C –

	Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/28/2019	<u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/30/2019	<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. (Pomerantz, Jeffrey)
12/30/2019	<u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , (Hayward, Melissa)
12/31/2019	<u>288</u> Certificate No Objection to Retention of Sidley Austin LLP filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/31/2019	<u>289</u> Debtor-in-possession monthly operating report for filing period November 1, 2019 to November 30, 2019 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/31/2019	<u>290</u> Certificate No Objection to Retention of FTI Consulting, Inc. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i> ). (Hoffman, Juliana)
12/31/2019	<u>291</u> Order granting motion for expedited hearing (Related Doc# <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019. (Whitaker, Sheniqua)
01/02/2020	<u>292</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration Alexander G. McGeoch in Support of Hunton Andrews Kurth LLP as Ordinary Course Professional</i> ; 3) <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton</i>

	<i>Andrews Kurth LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>293</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim &amp; Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>294</u> Certificate Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney ( <i>Co-Counsel</i> ) <i>Nunc Pro Tunc</i> ). (Hoffman, Juliana)
01/02/2020	<u>295</u> Notice of Appearance and Request for Notice by Edwin Paul Keiffer filed by Interested Party Hunter Mountain Trust. (Keiffer, Edwin)
01/02/2020	<u>296</u> Certificate of service re: <i>Documents Served on December 27, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>280</u> Motion for protective order: <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors, <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>282</u> Support/supplemental document to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, <i>Nunc Pro Tunc</i> as of the Petition Date filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>297</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>291</u> Order granting motion for expedited hearing (Related Doc <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
01/03/2020	<u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)
01/03/2020	<u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/8/2020. (Hoffman, Juliana)
01/03/2020	<u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document # <u>222</u> ) Entered on 1/3/2020. (Okafor, M.)
01/03/2020	<u>301</u> Order granting the joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (related document # <u>273</u> ). The Committee and the Debtor shall have until January 6, 2020 to object to PensionDanmarks

	Stay Relief Motion Entered on 1/3/2020. (Okafor, M.)
01/05/2020	<u>302</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)) No. of Notices: 45. Notice Date 01/05/2020. (Admin.)
01/05/2020	<u>303</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document <u>222</u> ) Entered on 1/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/05/2020. (Admin.)
01/06/2020	<u>304</u> Order granting <u>299</u> joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (Re: related document(s) <u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave)) Entered on 1/6/2020. (Okafor, M.)
01/06/2020	<u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Annable, Zachery)
01/06/2020	<u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Annable, Zachery)
01/06/2020	<u>307</u> Trustee's Objection to <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> (RE: related document(s) <u>280</u> Motion for protective order) (Lambert, Lisa)
01/06/2020	<u>308</u> Motion to appear pro hac vice for Asif Attarwala. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>309</u> Motion to appear pro hac vice for Kimberly A. Posin. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>310</u> Motion to appear pro hac vice for Andrew Clubok. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>311</u> Motion to appear pro hac vice for Kuan Huang. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>308</u> ). (U.S. Treasury)

01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>309</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>310</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>311</u> ). (U.S. Treasury)
01/06/2020	<u>312</u> Response opposed to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Jefferies LLC. (Attachments: # <u>1</u> Exhibit A) (Doherty, Casey)
01/06/2020	<u>313</u> Trustee's Objection to <i>Motion to Approve Joint Agreement</i> (RE: related document(s) <u>281</u> Motion to compromise controversy) (Lambert, Lisa)
01/06/2020	<u>314</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/06/2020	<u>315</u> Certificate of service re: <i>1) Notice of Hearing on Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to held on January 9, 2020 at 9:30 a.m. (CT); and 2) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be held on January 9, 2020 at 9:30 a.m. (CT)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P., <u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2020	<u>316</u> Certificate of service re: <i>1) Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from November 1, 2019 Through November 30, 2019; 2) Notice of Hearing re: Motion of the Debtor to Approve Settlement with Official Committee of</i>

	<p><i>Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; to be Held on January 9, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. filed by Debtor Highland Capital Management, L.P., <u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/07/2020	<p><u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document # <u>308</u>) Entered on 1/7/2020. (Okafor, M.)</p>
01/07/2020	<p><u>318</u> Order granting motion to appear pro hac vice adding Kimberly A. Posin for UBS AG London Branch and UBS Securities LLC (related document # <u>309</u>) Entered on 1/7/2020. (Okafor, M.)</p>
01/07/2020	<p><u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u>) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).</p>
01/07/2020	<p><u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document # <u>311</u>) Entered on 1/7/2020. (Okafor, M.)</p>
01/07/2020	<p><u>321</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Annable, Zachery)</p>
01/07/2020	<p><u>322</u> Certificate of service re: Certificate of Service filed by Interested Party Jefferies LLC (RE: related document(s)<u>312</u> Response). (Doherty, Casey)</p>
01/07/2020	<p><u>323</u> Notice of Appearance and Request for Notice (<i>Amended</i>) by Joseph E. Bain filed by Creditor Issuer Group. (Bain, Joseph)</p>
01/07/2020	<p><u>324</u> ***WITHDRAWN per docket # <u>467</u>** Objection to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.)<i>Limited Objection to Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> filed by Creditor Issuer Group. (Bain, Joseph) Modified on 2/24/2020 (Ecker, C.).</p>
01/08/2020	<p><u>325</u> Motion to appear pro hac vice for James T. Bentley. Fee Amount \$100 Filed by Creditor Issuer Group (Anderson, Amy)</p>
01/08/2020	<p>Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27331269, amount \$ 100.00 (re: Doc# <u>325</u>). (U.S. Treasury)</p>
01/08/2020	<p><u>326</u> Notice of Compliance with Local Bankruptcy Rule 2090-4 filed by Creditor Issuer Group. (Anderson, Amy)</p>

01/08/2020	<p><u>327</u> Declaration re: (<i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Annable, Zachery)</p>
01/08/2020	<p><u>328</u> Agreed Notice of hearing with PensionDanmark and Highland Capital Management, L.P. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u>, (Hoffman, Juliana)</p>
01/08/2020	<p><u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.).</p>
01/08/2020	<p><u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.).</p>
01/08/2020	<p><u>331</u> Certificate of service re: <i>Order Regarding Request for Expedited Hearing; to be Held on January 9, 2020 at 9:30 a.m. (Prevailing Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>291</u> Order granting motion for expedited hearing (Related Doc<u>283</u>)(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u>, Entered on 12/31/2019.). (Kass, Albert)</p>
01/08/2020	<p><u>332</u> Certificate of service re: <i>1) Amended Notice of Hearing on Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to be Held on January 21, 2020 at 9:30 a.m. (Central Time); 2) Amended Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u>, filed by Debtor Highland Capital Management, L.P., <u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u>, filed by Debtor Highland Capital Management, L.P.).</p>

	(Kass, Albert)
01/09/2020	<u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document # <u>325</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document # <u>206</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>335</u> Court admitted exhibits date of hearing 01/09/2020. DEBTOR EXHIBIT 1 ADMITTED. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) (Jeng, Hawaii)
01/09/2020	<u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document # <u>205</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>337</u> Order granting application to employ Young Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u> ) Entered on 1/9/2020. (Okafor, M.) Modified to correct Firm name on 1/13/2020 (Ecker, C.).
01/09/2020	<u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Hayward, Melissa)
01/09/2020	<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( related document # <u>281</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Melissa S. Hayward # <u>2</u> Proposed Order) (Annable, Zachery)
01/09/2020	<u>341</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document <u>308</u> ) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/09/2020. (Admin.)
01/09/2020	Hearing held on 1/9/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.) (Edmond, Michael) (Entered: 01/10/2020)
01/10/2020	<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date

	(related document # <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)
01/10/2020	<u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. (Hoffman, Juliana)
01/10/2020	<u>344</u> Certificate of service re: <i>Documents Served on January 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>327</u> Declaration re: ( <i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). filed by Debtor Highland Capital Management, L.P., <u>328</u> Agreed Notice of hearing <i>with PensionDanmark and Highland Capital Management, L.P.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/10/2020	<u>345</u> Certificate of service re: <i>Documents Served on January 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document <u>206</u> ) Entered on 1/9/2020. (Okafor, M.), <u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document <u>205</u> ) Entered on 1/9/2020. (Okafor, M.), <u>337</u> Order granting application to employ Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u> ) Entered on 1/9/2020. (Okafor, M.), <u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). filed by Debtor Highland Capital Management, L.P., <u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Melissa S. Hayward # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/10/2020	<u>346</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u> ) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/10/2020	<u>347</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch

	and UBS Securities LLC (related document <a href="#">311</a> ) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/11/2020	<a href="#">348</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">333</a> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document <a href="#">325</a> ) Entered on 1/9/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/11/2020. (Admin.)
01/12/2020	<a href="#">349</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">342</a> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <a href="#">74</a> ) Entered on 1/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/12/2020. (Admin.)
01/13/2020	<a href="#">350</a> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">229</a> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/13/2020	<a href="#">351</a> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # <a href="#">1</a> Exhibit A—Proposed Order) (Annable, Zachery)
01/13/2020	<a href="#">352</a> DOCKET IN ERROR: Request for transcript regarding a hearing held on 1/9/2020. The requested turn-around time is daily. (Edmond, Michael) Modified on 1/21/2020 REQUEST WAS CANCELLED THE SAME DATE AS REQUESTED OF 1/13/2020. (Edmond, Michael).
01/13/2020	<a href="#">353</a> Objection to (related document(s): <a href="#">270</a> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> ) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
01/14/2020	<a href="#">354</a> Notice ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">281</a> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Proposed Order)). (Attachments: # <a href="#">1</a> Exhibit A—Final Term Sheet) (Annable, Zachery)
01/14/2020	<a href="#">355</a> Certificate of service re: <i>Summary and First Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from October 29, 2019 to and Including November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">343</a> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/14/2020	<a href="#">356</a> Certificate of service re: <i>Debtor's Motion for Entry of an Order Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">351</a> Motion to extend time to (Debtor's Motion for

	Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/14/2020	<u>357</u> Witness and Exhibit List <i>in Connection with Motion to Appoint a Chapter 11 Trustee</i> filed by U.S. Trustee United States Trustee (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee). (Lambert, Lisa)
01/14/2020	<u>358</u> Witness and Exhibit List <i>in connection with Motion to Seal and Joint Motion for an Agreed Protective Order</i> filed by U.S. Trustee United States Trustee (RE: related document(s) <u>10</u> Motion to file document under seal., <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> ). (Lambert, Lisa)
01/15/2020	<u>359</u> Agreed Motion to continue hearing on (related documents <u>218</u> Motion for relief from stay) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
01/15/2020	<u>360</u> <i>Withdrawal of Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>76</u> Motion by Highland Capital Management, L.P.). (Hayward, Melissa)
01/15/2020	<u>361</u> Order granting motion to continue hearing on (related document # <u>359</u> ) (related documents Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGS AKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181.). It is hereby ORDERED that a hearing on the Stay Relief Motion shall be continued to a later date provided by the Court and mutually acceptable to the Parties. Entered on 1/15/2020. (Okafor, M.)
01/15/2020	<u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/15/2020	<u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to

	<p>Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O’Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to maintain bank accounts.), <u>271</u> Trustee’s Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, (Annable, Zachery)</p>
01/15/2020	<p><u>364</u> Objection to (related document(s): <u>271</u> Trustee’s Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
01/16/2020	<p><u>365</u> Certificate of service re: Objection to First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel for the Period From October 16, 2019 Through November 30, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>366</u> Amended Witness and Exhibit List <i>in Connection with Motion to Appoint a Chapter 11 Trustee</i> filed by U.S. Trustee United States Trustee (RE: related document(s)<u>357</u> List (witness/exhibit/generic)). (Lambert, Lisa)</p>
01/16/2020	<p><u>367</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel, <u>69</u> Application to employ Lynn Pinker Cox &amp; Hurst LLP as Special Counsel). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/17/2020	<p><u>369</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)</p>

01/17/2020	<u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)( <i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/17/2020	<u>371</u> Order granting joint motion to continue hearing on (related document # <u>370</u> ) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.)
01/17/2020	<u>372</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>362</u> Response). (Annable, Zachery)
01/19/2020	<u>373</u> Amended Notice ( <i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/20/2020	<u>374</u> Amended Notice ( <i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice ( <i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/21/2020	<u>375</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M.

	<p>Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p><u>376</u> Certificate of service re: <i>Notice of Final Term Sheet</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>354</u> <i>Notice (Notice of Final Term Sheet)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). (Attachments: # 1 Exhibit A—Final Term Sheet) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s)<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s)<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p><u>377</u> Certificate of service re: <i>1) Objection of the Debtor to United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee; and 2) Notice of Hearing; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF</p>

	<p>DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s) Motion to maintain bank accounts.), <u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s) <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s) <u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1</p>

	Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.) (Edmond, Michael)
01/21/2020	<u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. (Hoffman, Juliana)
01/21/2020	<u>383</u> Court admitted exhibits date of hearing January 21, 2020 (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by Lisa Lambert representing the U.S. Trustee) (Court Admitted U.S. Trustee's Exhibits #4, #5, #7, #8, #9, #10 and Took Judicial Notice of Exhibit #11) (Edmond, Michael) (Entered: 01/22/2020)
01/22/2020	<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document # <u>7</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document # <u>177</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document # <u>180</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>382</u> Agreed Order Granting Motion for Protective Order (related document # <u>280</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>384</u> Declaration re: <i>Notice / Declaration of Conor P. Tully in Support of the Retention of FTI Consulting, Inc.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i> ). (Hoffman, Juliana)
01/22/2020	<u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland C). (Annable, Zachery)
01/22/2020	<u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). (Annable, Zachery)
01/22/2020	<u>387</u> Request for transcript regarding a hearing held on 1/21/2020. The requested turn-around time is hourly. (Edmond, Michael) (Entered: 01/23/2020)

01/23/2020	<u>388</u> Certificate of service re: First Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019 filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>384</u> Declaration). (Hoffman, Juliana)
01/23/2020	<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. (Hoffman, Juliana)
01/23/2020	<u>390</u> Supplemental Notice of the <i>Young Conaway Stargatt &amp; Taylor, LLP Final Fee Application</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). (Hoffman, Juliana)
01/23/2020	<u>391</u> Certificate of service re: Final Fee Application <i>on behalf of Young Conaway Stargatt &amp; Taylor, LLP</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Perio). (Hoffman, Juliana)
01/24/2020	<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. (Pomerantz, Jeffrey)
01/24/2020	<u>393</u> Transcript regarding Hearing Held 01/21/2020 (140 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/23/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.), Hearing held on 1/21/2020. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload

	<p>order.), Hearing held on 1/21/2020. (RE: related document(s)<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)<u>280</u> Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)<u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.)). Transcript to be made available to the public on 04/23/2020. (Rehling, Kathy)</p>
<p>01/24/2020</p>	<p><u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)</p>

01/24/2020	<u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/24/2020	<u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) ( <i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/24/2020	<u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Email Correspondence) (Annable, Zachery)
01/24/2020	<u>398</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u> ) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/24/2020. (Admin.)
01/24/2020	<u>399</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u> ) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 44. Notice Date 01/24/2020. (Admin.)
01/27/2020	<u>400</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/27/2020	<u>401</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>368</u> <i>Notice (Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	<u>402</u> Certificate of service re: <i>Documents Served on January 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>369</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P., <u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)( <i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>371</u> Order granting

	<p>joint motion to continue hearing on (related document <a href="#">370</a>) (related documents Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox &amp; Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.), <a href="#">372</a> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">362</a> Response). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/27/2020	<p><a href="#">403</a> Certificate of service re: <i>Documents Served on or before January 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">373</a> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">368</a> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P., <a href="#">374</a> Amended Notice (<i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">368</a> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P., <a href="#">373</a> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">368</a> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P., <a href="#">378</a> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
01/27/2020	<p><a href="#">404</a> Certificate of service re: <i>Documents Served on January 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">379</a> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <a href="#">7</a>) Entered on 1/22/2020. (Okafor, M.), <a href="#">380</a> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document <a href="#">177</a>) Entered on 1/22/2020. (Okafor, M.), <a href="#">381</a> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <a href="#">180</a>) Entered on 1/22/2020. (Okafor, M.), <a href="#">382</a> Agreed Order Granting Motion for Protective Order (related document <a href="#">280</a>) Entered on 1/22/2020. (Okafor, M.), <a href="#">385</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">235</a> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland C). filed by Debtor Highland Capital Management, L.P., <a href="#">386</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">286</a> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/27/2020	<p><a href="#">405</a> Debtor-in-possession monthly operating report for filing period 10/16/2019 to 10/31/2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/27/2020	<p><a href="#">406</a> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized</i></p>

	<i>by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Updated OCP List # <u>2</u> Exhibit 2—Blackline OCP List) (Annable, Zachery)
01/27/2020	<u>407</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
01/27/2020	<u>408</u> Notice of hearing( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/28/2020	<u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) <u>128</u> Document and <u>127</u> Motion ). Entered on 1/28/2020 (Okafor, M.). Modified linkage on 2/11/2020 (Okafor, M.).
01/28/2020	<u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc# <u>396</u> )(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , Entered on 1/28/2020. (Okafor, M.)
01/28/2020	<u>411</u> Notice of Appearance and Request for Notice by Shawn M. Christianson Filed by Creditor Oracle America, Inc.. (Christianson, Shawn)
01/28/2020	<u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , (Annable, Zachery)
01/29/2020	<u>413</u> Certificate of service re: 1) <i>First and Final Application of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> ; 2) <i>Notice of First and Final Application of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>390</u> Supplemental Notice of the Young Conaway Stargatt &amp; Taylor, LLP Final Fee Application filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.</i>). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>

01/29/2020	<p><u>414</u> Certificate of service re: <i>Documents Served on January 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. filed by Debtor Highland Capital Management, L.P., <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland), <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) (<i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016–1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/30/2020	<p><u>415</u> Certificate of service re: <i>Documents Served on January 27, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>406</u> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Updated OCP List # 2 Exhibit 2—Blackline OCP List) filed by Debtor Highland Capital Management, L.P., <u>407</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>408</u> Notice of hearing(<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/30/2020	<p><u>416</u> Certificate of service re: <i>Documents Served on January 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document). Entered on 1/28/2020 (Okafor, M.), <u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc<u>396</u>)(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u>, Entered on 1/28/2020. (Okafor, M.), <u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>395</u> Motion to extend or limit</p>

	the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/31/2020	<u>417</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
01/31/2020	<u>418</u> Debtor—in—possession monthly operating report for filing period December 1, 2019 to December 31, 2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/31/2020	<u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/31/2020	<u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # <u>1</u> Exhibit A Fee Statement # <u>2</u> Exhibit B Expense Detail) (Hoffman, Juliana)
01/31/2020	<u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Form of Bar Date Notice # <u>2</u> Exhibit B—Form of Publication Notice # <u>3</u> Exhibit C—Proposed Order) (Annable, Zachery)
01/31/2020	<u>422</u> Motion for expedited hearing(related documents <u>421</u> Motion for leave) ( <i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/02/2020	<u>423</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$7). (Hoffman, Juliana)
02/03/2020	<u>424</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/04/2020	<u>425</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associate</i> ). (Hayward, Melissa)

02/04/2020	<p><u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u>, (Annable, Zachery)</p>
02/05/2020	<p><u>427</u> Order granting motion for expedited hearing (Related Doc# <u>422</u>)(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u>, Entered on 2/5/2020. (Okafor, M.)</p>
02/05/2020	<p><u>428</u> Order denying motion to appoint trustee. (related document # <u>271</u>) Entered on 2/5/2020. (Okafor, M.)</p>
02/06/2020	<p><u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)</p>
02/06/2020	<p><u>430</u> Certificate of service re: <i>Documents Served on January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>417</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # 1 Exhibit A Fee Statement # 2 Exhibit B Expense Detail) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>422</u> Motion for expedited hearing(related documents <u>421</u> Motion for leave) (<i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/06/2020	<p><u>431</u> Certificate of service re: <i>Notice of Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u>, filed by Debtor Highland</p>

	Capital Management, L.P.). (Kass, Albert)
02/06/2020	<u>432</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/07/2020	<u>433</u> Clerk's correspondence requesting an order or a notice of hearing from attorney for debtor. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)) Responses due by 2/14/2020. (Ecker, C.)
02/10/2020	<u>434</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure)). (Hayward, Melissa)
02/10/2020	<u>435</u> Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document # <u>340</u> ) Entered on 2/10/2020. (Okafor, M.)
02/10/2020	<u>436</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/10/2020	<u>437</u> Notice <i>(Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/10/2020	<u>438</u> **WITHDRAWN by document # <u>443</u> ** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u> , (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.).

02/11/2020	<u>439</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>67</u> Motion by Highland Capital Management, L.P.). (Annable, Zachery)
02/12/2020	<u>440</u> Certificate of service re: <i>1) Order Granting Motion for Expedited Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof; to be Held on February 19, 2020 at 9:30 a.m. (Central Time); 2) Order Denying United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>427</u> Order granting motion for expedited hearing (Related Doc <u>422</u> )(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , Entered on 2/5/2020. (Okafor, M.), <u>428</u> Order denying motion to appoint trustee. (related document <u>271</u> ) Entered on 2/5/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	<u>441</u> Certificate of service re: <i>Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	<u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. (Hoffman, Juliana)
02/12/2020	<u>443</u> Notice ( <i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u> )). (Annable, Zachery)
02/12/2020	<u>444</u> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$32). (Hoffman, Juliana)
02/13/2020	<u>445</u> Certificate of service re: <i>1) Order Authorizing and Approving Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel; 2) Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date; and 3) Notice of Hearing re: First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019; to be Held on March 11, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>435</u> Order granting application to employ Hayward &amp; Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document <u>340</u>) Entered on 2/10/2020. (Okafor, M.), <u>437</u> Notice (<i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>438</u> **WITHDRAWN by document <u>443</u>** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u>, (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/13/2020	<p><u>446</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel). (Chiarello, Annmarie)</p>
02/13/2020	<p><u>447</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>395</u> Motion to extend or limit the exclusivity period). (Annable, Zachery)</p>
02/13/2020	<p><u>448</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>)). (Annable, Zachery)</p>
02/13/2020	<p><u>449</u> Certificate of service re: 1) <i>Second Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2019 to and Including December 31, 2019</i>; 2) <i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, Financial Advisor FTI Consulting, Inc., <u>443</u> Notice (<i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to</p>

	11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270.</u> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/14/2020	<u>450</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Perio). (Hoffman, Juliana)
02/14/2020	<u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # <u>1</u> Exhibit 1 (Arb Award) # <u>2</u> Exhibit 2 (Rule 11) # <u>3</u> Exhibit 3 (Terry Declaration)) (Shaw, Brian)
02/14/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27457656, amount \$ 181.00 (re: Doc# <u>451</u> ). (U.S. Treasury)
02/14/2020	<u>452</u> Notice of hearing filed by Jennifer G. Terry, Joshua Terry (RE: related document(s) <u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # 1 Exhibit 1 (Arb Award) # 2 Exhibit 2 (Rule 11) # 3 Exhibit 3 (Terry Declaration))). Preliminary hearing to be held on 3/11/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Shaw, Brian)
02/14/2020	<u>453</u> Objection to (related document(s): <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i> ) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
02/14/2020	<u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Annable, Zachery)
02/17/2020	<u>455</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/18/2020	<u>456</u> Notice of Withdrawal of Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>124</u> Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hoffman, Juliana)
02/18/2020	<u>457</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/). (Annable, Zachery)
02/19/2020	<u>458</u> Order granting first and final application for compensation (related document # <u>389</u> ) granting for Young Conaway Stargatt & Taylor, LLP as co-counsel for Official Committee of Unsecured Creditors, fees awarded: \$272300.00, expenses awarded: \$8855.56 Entered on 2/19/2020. (Okafor, M.)

02/19/2020	<u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document # <u>67</u> ) Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>462</u> Court admitted exhibits date of hearing February 19, 2020 (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P., (Court Admitted Debtors/Plaintiffs Exhibits #1, #2, #3, #4, #5, #6, #7 #8, & #9; Also Admitted Defendant/Respondent Exhibits #16 & #27 only). (Edmond, Michael)
02/19/2020	<u>463</u> Request for transcript regarding a hearing held on 2/19/2020. The requested turn-around time is hourly (Jeng, Hawaii)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted.(Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing.

	<i>Discussion of prior order on sealing motion and court clarified its intent.) (Edmond, Michael) (Entered: 02/25/2020)</i>
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>421</u> Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.) (Edmond, Michael) (Entered: 02/25/2020)
02/20/2020	<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. (Pomerantz, Jeffrey)
02/20/2020	<u>465</u> Application for compensation ( <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A December 2019 Fee Statement) (Annable, Zachery)
02/21/2020	<u>466</u> Notice ( <i>Notice of Debtor's Amended Operating Protocols</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( related document <u>281</u> ) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Amended Operating Protocols # <u>2</u> Exhibit B—Redline of Amended Operating Protocols) (Annable, Zachery)
02/21/2020	<u>467</u> Withdrawal of <i>Limited Objection to Motion of the Debtor for Approval of Settlement with The Official Committee Of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> filed by Creditor Issuer Group (RE: related document(s) <u>324</u> Objection). (Bain, Joseph)
02/21/2020	<u>468</u> Certificate of service re: Objection to Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel for the Period From December 1, 2019 through December 31, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i> ). (Chiarello, Annmarie)

02/21/2020	<u>469</u> Certificate of service re: <i>Debtor's Witness and Exhibit List in Connection with its Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>470</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>455</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>471</u> Certificate of service re: 1) <i>Order Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> ; 2) <i>Order Granting Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(D) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan</i> ; 3) <i>Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.), <u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.), <u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document <u>67</u> ) Entered on 2/19/2020. (Okafor, M.)). (Kass, Albert)
02/23/2020	<u>472</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2019 to 12/31/2019, Fee). (Hoffman, Juliana)
02/24/2020	<u>473</u> Agreed Order granting motion for relief from stay by Creditor Pension Danmark Pensjonsforsikringsaktieselskab (related document # <u>218</u> ) Entered on 2/24/2020. (Okafor, M.)
02/24/2020	<u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
02/24/2020	<u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
02/24/2020	<u>476</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/25/2020	

	<p><u>477</u> Order granting motion for expedited hearing (Related Doc# <u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, Entered on 2/25/2020. (Okafor, M.)</p>
02/25/2020	<p><u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, (Annable, Zachery)</p>
02/26/2020	<p><u>479</u> Transcript regarding Hearing Held 02/19/2020 (188 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 2/19/2020. (RE: related document(s)<u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted., Hearing held on 2/19/2020. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.), Hearing held on 2/19/2020. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.), Hearing held on 2/19/2020. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for</p>

	<p><i>Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.), Hearing held on 2/19/2020. (RE: related document(s)218 Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.)). Transcript to be made available to the public on 05/26/2020. (Rehling, Kathy)</i></p>
02/26/2020	<p><u>480</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i>; 2) <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 1, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. filed by Debtor Highland Capital Management, L.P., <u>465</u> Application for compensation (<i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A December 2019 Fee Statement)). (Kass, Albert)</p>
02/26/2020	<p><u>481</u> Certificate of service re: <i>Notice of Debtor's Amended Operating Protocols</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>466</u> Notice (<i>Notice of Debtor's Amended Operating Protocols</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( (related document <u>281</u>) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Amended Operating Protocols # 2 Exhibit B—Redline of Amended Operating Protocols) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/26/2020	<p><u>482</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>473</u> Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document <u>218</u>) Entered on 2/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 02/26/2020. (Admin.)</p>
02/27/2020	<p><u>483</u> Application to employ Deloitte Tax LLP as Other Professional (<i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Crawford Declaration # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)</p>
02/28/2020	<p><u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause</i></p>

	<i>Distributions to Certain "Related Entities")</i> . (Annable, Zachery)
02/28/2020	<u>485</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—OCP Tracking Report) (Annable, Zachery)
03/02/2020	<u>486</u> Response opposed to (related document(s): <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party California Public Employees Retirement System (CalPERS). (Attachments: # <u>1</u> Exhibit A – Purchase and Sale Agreement # <u>2</u> Exhibit B – Assignment and Assumption Agreement) (Shriro, Michelle)
03/02/2020	<u>487</u> Objection to (related document(s): <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/02/2020	<u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document # <u>421</u> ) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)
03/02/2020	<u>489</u> Joinder by <i>Acis Capital Management, L.P. and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same</i> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>487</u> Objection). (Enright, Jason)
03/02/2020	<u>490</u> Motion to appear pro hac vice for Louis J. Cisz, III. Fee Amount \$100 Filed by Interested Party California Public Employees Retirement System (CalPERS) (Shriro, Michelle)
03/02/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27511024, amount \$ 100.00 (re: Doc# <u>490</u> ). (U.S. Treasury)
03/02/2020	<u>491</u> Certificate of service re: 1) <i>Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ; 2) <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/02/2020	<p><u>492</u> Certificate of service re: 1) <i>Order Granting Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; 2) <i>Notice of Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; to be Held on March 4, 2020 at 1:30 p.m. (Prevailing Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>477</u> Order granting motion for expedited hearing (Related Doc<u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, Entered on 2/25/2020. (Okafor, M.), <u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>493</u> Certificate of service re: 1) <i>Witness and Exhibit List for March 4, 2020 Hearing</i>; 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). filed by Debtor Highland Capital Management, L.P., <u>485</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A—OCP Tracking Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)(<i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
03/02/2020	<p><u>495</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>487</u> Objection). (Hoffman, Juliana)</p>
03/02/2020	<p><u>496</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). (Enright, Jason)</p>
03/03/2020	<p><u>497</u> Debtor-in-possession monthly operating report for filing period January 1, 2020 to January 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
03/03/2020	<p><u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
03/04/2020	<p><u>499</u> Reply to (related document(s): <u>487</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>

03/04/2020	<u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document # <u>490</u> ) Entered on 3/4/2020. (Okafor, M.)
03/04/2020	<u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. (Hoffman, Juliana)
03/04/2020	Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.) (Edmond, Michael) (Entered: 03/05/2020)
03/04/2020	<u>504</u> Court admitted exhibits date of hearing March 4, 2020 (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") Filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, & #12) (Edmond, Michael) (Entered: 03/05/2020)
03/05/2020	<u>502</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12). (Hoffman, Juliana)
03/05/2020	<u>503</u> Request for transcript regarding a hearing held on 3/4/2020. The requested turn-around time is daily (Jeng, Hawaii)
03/06/2020	<u>505</u> Notice of Appearance and Request for Notice by John Y. Bonds III filed by Interested Party James Dondero. (Bonds, John)
03/06/2020	<u>506</u> Notice of Appearance and Request for Notice by Bryan C. Assink filed by Interested Party James Dondero. (Assink, Bryan)
03/06/2020	<u>507</u> Motion to appear pro hac vice for Jeffrey Bjork. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana) Modified to correct attorney name on 3/6/2020 (Ecker, C.).
03/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27531772, amount \$ 100.00 (re: Doc# <u>507</u> ). (U.S. Treasury)
03/06/2020	<u>508</u> Witness and Exhibit List filed by Jennifer G. Terry, Joshua Terry (RE: related document(s) <u>451</u> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)

03/06/2020	<u>509</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document <u>490</u> ) Entered on 3/4/2020. (Okafor, M.) No. of Notices: 1. Notice Date 03/06/2020. (Admin.)
03/10/2020	<u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document # <u>507</u> ) Entered on 3/10/2020. (Okafor, M.)
03/11/2020	<u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	<u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc # <u>474</u> ) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document # <u>68</u> ) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	Hearing held on 3/11/2020. (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (Appearances: M. Hayward for Debtor; B Shaw for Movants; J. Hoffman for UCC; M. Platt (and M. Hankin telephonically) for Redeemer Committee; J. Bonds for J. Dondero; A. Anderson for certain Issuers. Evidentiary hearing. Motion granted. Counsel to upload order.)(Edmond, Michael)
03/11/2020	<u>515</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI January 2020 Staffing Report) (Annable, Zachery)
03/11/2020	<u>516</u> Court admitted exhibits date of hearing March 11, 2020 (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (COURT ADMITTED PLAINTIFF EXHIBIT'S #M1, #M2 & #M3). (Edmond, Michael)
03/12/2020	<u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. (Hoffman, Juliana)
03/12/2020	<u>518</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document <u>507</u> ) Entered on 3/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/12/2020. (Admin.)

03/13/2020	<u>519</u> Order granting motion for relief from stay by Jennifer G. Terry , Joshua Terry (related document # <u>451</u> ) Entered on 3/13/2020. (Okafor, M.)
03/13/2020	<u>520</u> BNC certificate of mailing. (RE: related document(s) <u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>521</u> BNC certificate of mailing. (RE: related document(s) <u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>522</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u> ) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>523</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u> ) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/14/2020	<u>524</u> Certificate of service re: <i>Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document <u>421</u> ) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)). (Kass, Albert)
03/14/2020	<u>525</u> Certificate of service re: <i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)( <i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/14/2020	<u>526</u> Certificate of service re: <i>Third Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30.</i> Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

03/16/2020	<u>527</u> Notice of Appearance and Request for Notice by David G. Adams filed by Creditor United States (IRS). (Adams, David)
03/16/2020	<u>528</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland C). (Annable, Zachery)
03/17/2020	<u>529</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>465</u> Application for compensation ( <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i> ) for Hayward). (Annable, Zachery)
03/17/2020	<u>530</u> Certificate of service re: <i>Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>531</u> Certificate of service re: <i>1) Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain Related Entities; 2) Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 Through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u> ) Entered on 3/11/2020. (Bradden, T.), <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u> ) Entered on 3/11/2020. (Bradden, T.), <u>515</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI January 2020 Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>532</u> Certificate of service re: <i>Third Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00.</i> Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/18/2020	<u>533</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2020	<u>534</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2020	

	<p><u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. (Pomerantz, Jeffrey)</p>
03/19/2020	<p><u>536</u> Application for compensation (<i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—January 2020 Invoice) (Annable, Zachery)</p>
03/19/2020	<p><u>537</u> Notice of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)</p>
03/20/2020	<p><u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>
03/20/2020	<p><u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>
03/20/2020	<p><u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>
03/20/2020	<p><u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>
03/20/2020	<p><u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. (Hoffman, Juliana)</i></p>
03/22/2020	

	<u>543</u> Stipulation by Highland Capital Management, L.P., UBS AG London Branch, UBS Securities LLC and. filed by Debtor Highland Capital Management, L.P., Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>488</u> Order on motion for leave). (Manns, Ryan)
03/23/2020	<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. (Hoffman, Juliana)
03/23/2020	<u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
03/23/2020	<u>546</u> Certificate of service re: <i>(Supplemental) Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/25/2020	<u>547</u> Joint Stipulation and Order Extending Bar Date for UBS Securities LLC and UBS AG London Branch (RE: related document(s) <u>543</u> Stipulation filed by Debtor Highland Capital Management, L.P., Interested Party UBS Securities LLC, Interested Party UBS AG London Branch). Entered on 3/25/2020 (Okafor, M.)
03/25/2020	<u>548</u> Agreed Order Extending the Deadline to Object to the Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief (Related documents # <u>545</u> Motion to extend and <u>483</u> Application to employ Deloitte Tax LLP) Entered on 3/25/2020. (Okafor, M.)
03/26/2020	<u>549</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569). (Hoffman, Juliana)
03/26/2020	<u>550</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>483</u> Application to employ Deloitte Tax LLP as Other Professional ( <i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date;</i> ). (Annable, Zachery)
03/27/2020	<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document # <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)
03/27/2020	<u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
03/27/2020	<u>553</u> Certificate of service re: 1) <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 Through February 29, 2020</i> ; 2) <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i> ; and 3) <i>Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski</i>

	<p><i>Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. filed by Debtor Highland Capital Management, L.P., 536 Application for compensation (Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—January 2020 Invoice), 537 Notice of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 342 Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document 74) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
03/27/2020	<p><i>554 Certificate of service re: Documents Served on or Before March 21, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 538 Amended application for compensation Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019 for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, 539 Amended application for compensation Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019 for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, 540 Application for compensation Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020 for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, 541 Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, 542 Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i></p>
03/27/2020	<p><i>555 Certificate of service re: 1) Fourth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from February 1, 2020 to and Including February 29, 2020; 2) Agreed Motion to Extend Objection Deadline for the Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 544 Application for compensation Fourth Monthly Application for Compensation and Reimbursement of Expenses for FTI</i></p>

	Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. filed by Financial Advisor FTI Consulting, Inc., <u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/31/2020	<u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.)
03/31/2020	<u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/02/2020	<u>558</u> Debtor-in-possession monthly operating report for filing period 02/01/2020 to 02/29/2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/02/2020	<u>559</u> Certificate of service re: <i>(Supplemental) Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.)
04/03/2020	<u>561</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00.). (Hoffman, Juliana)
04/03/2020	<u>562</u> Notice of hearing( <i>Notice of May 26, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>563</u> Notice of hearing( <i>Notice of June 15, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>564</u> Certificate of service re: <i>1) Agreed Order: (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief; 2) Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.), <u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>565</u> Certificate of service re: <i>1) Order Approving Stipulation Permitting Brown Rudnick LLP to File a Proof of Claim After the General Bar Date; 2) Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date

	(RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.), <u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/06/2020	<u>566</u> Declaration re: ( <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
04/06/2020	<u>567</u> Notice ( <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)
04/07/2020	<u>568</u> Notice of hearing( <i>Notice of July 8, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/07/2020	<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020. (Hoffman, Juliana)
04/07/2020	<u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. (Hoffman, Juliana)
04/08/2020	<u>571</u> Transcript regarding Hearing Held 03/04/20 RE: Motion hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber J&J Court Transcribers, Inc., Telephone number 609-586-2311. (RE: related document(s) Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.)). Transcript to be made available to the public on 07/7/2020. (Bowen, James)
04/08/2020	

	<u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s) <u>488</u> Order on motion for leave). (Bain, Joseph)
04/09/2020	<u>573</u> Application for compensation ( <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—February 2020 Fee Statement) (Annable, Zachery)
04/09/2020	<u>574</u> Certificate No Objection Regarding Fifth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From February 1, 2020 Through February 29, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nat). (Pomerantz, Jeffrey)
04/10/2020	<u>575</u> Certificate of service re: 1) <i>Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims; 2) Notice of May 26, 2020 Omnibus Hearing Date; to be Held on May 26, 2020 at 9:30 a.m. (Central Time); and 3) Notice of June 15, 2020 Omnibus Hearing Date; to be Held on June 15, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.), <u>562</u> Notice of hearing( <i>Notice of May 26, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>563</u> Notice of hearing( <i>Notice of June 15, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	<u>576</u> Certificate of service re: 1) <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date; and 2) Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>566</u> Declaration re: ( <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>567</u> Notice ( <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	<u>577</u> Certificate of service re: 1) <i>Summary Sheet and First Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019</i>

	<p><i>Through and Including February 29, 2020; and 2) Summary Sheet and First Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
04/10/2020	<p><u>578</u> Certificate of service re: <i>Notice of July 8, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>568</u> Notice of hearing(<i>Notice of July 8, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/10/2020	<p><u>579</u> Certificate of service re: <i>Joint Stipulation and [Proposed] Order Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)<u>488</u> Order on motion for leave). filed by Creditor Issuer Group). (Kass, Albert)</p>
04/10/2020	<p><u>580</u> Objection to (related document(s): <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)</p>
04/11/2020	<p><u>581</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: &amp;#0). (Hoffman, Juliana)</p>
04/13/2020	<p><u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # <u>1</u> Proposed Order) (Skolnekovich, Nicole)</p>
04/14/2020	<p><u>583</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62.). (Hoffman, Juliana)</p>

04/14/2020	<u>584</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>536</u> Application for compensation ( <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> ) for Hayward & Associates). (Annable, Zachery)
04/14/2020	<u>585</u> Notice of Appearance and Request for Notice Filed by Creditor American Express National Bank. (Bharatia, Shraddha)
04/14/2020	<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. (Pomerantz, Jeffrey)
04/15/2020	<u>587</u> Certificate of service re: <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>573</u> Application for compensation ( <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—February 2020 Fee Statement) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
04/15/2020	<u>588</u> Certificate of service re: Omnibus Limited Objection to Applications for Compensation and Reimbursement of Expense of Foley Gardere, Foley & Lardner LLP as Special Counsel for the Period From October 16, 2019 Through February 29, 2020 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November, 539</i> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through, 540</i> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ). (Chiarello, Annmarie)
04/15/2020	<u>589</u> Notice of hearing filed by Interested Party Hunton Andrews Kurth LLP (RE: related document(s) <u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # 1 Proposed Order)). Hearing to be held on 5/7/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>582</u> , (Skolnekovich, Nicole)
04/15/2020	<u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Proposed Order # <u>11</u> Service List) (Kane, John)
04/17/2020	<u>591</u> Certificate of service re: <i>1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management,

	L.P.). (Kass, Albert)
04/17/2020	<u>592</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for March 2020) (Annable, Zachery)
04/17/2020	<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # <u>1</u> Exhibit 1 (Draft Motion Show Cause Motion) # <u>2</u> Exhibit 2 (DAF Complaint 1st case) # <u>3</u> Exhibit 3 (DAF Dismissal first case) # <u>4</u> Exhibit 4 (DAF Complaint 2nd case) # <u>5</u> Exhibit 5 (DAF Dismissal 2nd Case) # <u>6</u> Proposed Order) (Shaw, Brian)
04/17/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sg11) [motion,mrlfsty] ( 181.00). Receipt number 27675692, amount \$ 181.00 (re: Doc# <u>593</u> ). (U.S. Treasury)
04/20/2020	<u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. (Hoffman, Juliana)
04/21/2020	<u>595</u> Certificate of service re: <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/21/2020	<u>596</u> Certificate of service re: <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/21/2020	<u>597</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>592</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for March 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/22/2020	

	Receipt Number 00338531, Fee Amount \$3,601,018.59 (RE: Related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd,K) (Entered: 08/10/2020)
04/23/2020	Receipt Number 00338532, Fee Amount \$898,075.53 (RE: related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
04/24/2020	<u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A March 2020 Invoice) (Annable, Zachery)
04/24/2020	<u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Deloitte Tax Engagement Letters) (Annable, Zachery)
04/28/2020	<u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
04/28/2020	<u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
04/28/2020	<u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)
04/28/2020	<u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ; and 2) <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2020	

	<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Alexander McGeoch # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
04/28/2020	<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Timothy Silva # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
04/28/2020	<u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/28/2020	<u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	<u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	<u>609</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A Fee Statements) (Annable, Zachery)
04/28/2020	<u>610</u> Notice of hearing <i>Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney

	<p>Jeffrey Nathan Pomerantz Objections due by 5/19/2020., <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>569</u> and for <u>607</u> and for <u>609</u> and for <u>570</u> and for <u>602</u> and for <u>608</u>, (Pomerantz, Jeffrey)</p>
04/28/2020	<p><u>611</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, (Annable, Zachery)</p>
04/28/2020	<p><u>612</u> Certificate of service re: (<i>Supplemental</i>) 1) <i>Notice of Bar Dates for Filing Claims</i>; and 2) [<i>Customized</i>] <i>Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/29/2020	<p><u>613</u> Clerk's correspondence requesting a notice of hearing from attorney for debtor. (RE: related document(s)<u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)) Responses due by 5/13/2020. (Ecker, C.)</p>
04/29/2020	<p><u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.)</p>
04/29/2020	<p><u>615</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s)<u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
04/30/2020	<p><u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)</p>
05/01/2020	

	<p><u>617</u> Response unopposed to (related document(s): <u>593</u> Motion for relief from stay Fee amount \$181, filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)</p>
05/05/2020	<p><u>618</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
05/05/2020	<p><u>619</u> Certificate of service re: <i>Documents Served on April 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020; and 2) Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>598</u> Application for compensation (<i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A March 2020 Invoice) filed by Other Professional Hayward &amp; Associates PLLC, <u>599</u> Notice (<i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>606</u> Motion to</p>

extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. filed by Debtor Highland Capital Management, L.P., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. filed by Consultant Mercer (US) Inc., 609 Application for compensation (*Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements) filed by Other Professional Hayward & Associates PLLC, 610 Notice of hearing *Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., 609 Application for compensation (*Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 569 and for 607 and for 609 and for 570 and for 602 and for 608, filed by Debtor Highland Capital Management, L.P., 611 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel (*Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date*) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (*Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules*

	<p><i>2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/05/2020	<p><u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). (Attachments: # <u>1</u> Exhibit A—Employee Letter) (Annable, Zachery)</p>
05/05/2020	<p><u>621</u> Certificate of No Objection Regarding Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward &amp;). (Annable, Zachery)</p>
05/05/2020	<p><u>622</u> Certificate No Objection Regarding Sixth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Po). (Pomerantz, Jeffrey)</p>
05/06/2020	<p><u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document # <u>582</u>) Entered on 5/6/2020. (Okafor, M.)</p>
05/06/2020	<p><u>624</u> Objection to (related document(s): <u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>] filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
05/06/2020	<p><u>625</u> Certificate of service re: Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>624</u> Objection). (Hoffman, Juliana)</p>
05/06/2020	<p><u>626</u> Certificate of service re: 1) <i>Order Approving Second Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim after the General Bar Date; and 2) Agreed Motion to Extend by Sixty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.), <u>615</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s)<u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/06/2020	<p><u>627</u> Certificate of service re: <i>Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Property Lease by Sixty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)). (Kass, Albert)</p>

05/08/2020	<u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)
05/12/2020	<u>629</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 3/31/2020, Fee: \$476.). (Hoffman, Juliana)
05/13/2020	<u>630</u> Reply to (related document(s): <u>624</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Service List) (Kane, John)
05/13/2020	<u>631</u> Certificate of service re: <i>1) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020; and 2) Joint Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors Modifying the Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>618</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Attachments: # 1 Exhibit A—Employee Letter) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2020	<u>632</u> Certificate of service re: <i>Stipulation and Agreed Order Permitting Hunton Andrew Kurth LLP to Apply Prepetition Retainer</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document <u>582</u> ) Entered on 5/6/2020. (Okafor, M.) filed by Interested Party Hunton Andrews Kurth LLP). (Kass, Albert)
05/13/2020	<u>633</u> Certificate of service re: <i>Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)). (Kass, Albert)
05/14/2020	<u>634</u> Debtor-in-possession monthly operating report for filing period March 1, 2020 to March 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/15/2020	<u>635</u> Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). Hearing to be held on 6/30/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>590</u> , (Attachments: # <u>1</u> Service List) (Kane, John)
05/19/2020	

	<u>636</u> Notice of Appearance and Request for Notice by Martin A. Sosland filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/19/2020	<u>637</u> Notice of Appearance and Request for Notice by Candice Marie Carson filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Carson, Candice)
05/19/2020	<u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
05/19/2020	<u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>641</u> Objection to (related document(s): <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
05/20/2020	<u>642</u> Trustee's Objection to <i>Foley &amp; Lardner, LLP's First Interim Application for Fees and Expenses</i> (RE: related document(s) <u>602</u> Application for compensation) (Lambert, Lisa)
05/20/2020	<u>643</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>598</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Asso). (Annable, Zachery)
05/20/2020	<u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K) (Sosland, Martin)
05/20/2020	<u>645</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K)). Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>644</u> , (Sosland, Martin)
05/20/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27774088, amount \$ 181.00 (re: Doc# <u>644</u> ). (U.S. Treasury)

05/20/2020	<u>646</u> Order approving third stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/20/2020 (Okafor, M.)
05/20/2020	<u>647</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere,, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25) (Chiarello, Annmarie)
05/21/2020	<u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. (Pomerantz, Jeffrey)
05/22/2020	<u>649</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i> ). (Annable, Zachery)
05/22/2020	<u>650</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (). (Annable, Zachery)
05/22/2020	<u>651</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,</i> ). (Hoffman, Juliana)
05/22/2020	<u>652</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09</i> ). (Hoffman, Juliana)
05/22/2020	<u>653</u> Declaration re: <i>(Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
05/22/2020	<u>654</u> Witness and Exhibit List for <i>May 26, 2020 Hearing</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to</i>

	<p>2/29/2020, Fee: \$3,, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i>, <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer</i> (, <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's At). (Annable, Zachery)</p>
05/22/2020	<u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.)
05/22/2020	<u>656</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>609</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)
05/22/2020	<u>657</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time)). (Annable, Zachery)
05/22/2020	<u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/23/2020	<u>659</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> )). (Annable, Zachery)
05/25/2020	<u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
05/26/2020	<u>661</u> Order granting application for compensation (related document # <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>662</u> Order granting application for compensation (related document # <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered

	on 5/26/2020. (Ecker, C.)
05/26/2020	<u>663</u> Order granting application for compensation (related document # <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>664</u> Order granting application for compensation (related document # <u>608</u> ) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>665</u> Amended Order granting application for compensation (related document # <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>666</u> Amended Order granting application for compensation (related document # <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>667</u> Order granting application for compensation (related document # <u>609</u> ) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document # <u>605</u> ) Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>670</u> Order granting application for compensation (related document # <u>602</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	<u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	<u>674</u> Hearing held on 5/26/2020. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time)

	filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order. (Edmond, Michael) (Entered: 05/27/2020)
05/27/2020	<u>671</u> Request for transcript (ruling only) regarding a hearing held on 5/26/2020. The requested turn-around time is daily (Jeng, Hawaii)
05/28/2020	<u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. (Hoffman, Juliana)
05/28/2020	<u>676</u> Transcript regarding Hearing Held 05/26/2020 (7 pgs.) RE: Fee Applications, Applications to Employ Nunc Pro Tunc, Motion to Extend Exclusivity Period (Excerpt: 10:00–10:06 a.m. Only). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.), <u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), <u>674</u> Hearing held on 5/26/2020. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order.). Transcript to be made available to the public on 08/26/2020. (Rehling, Kathy)
05/28/2020	<u>677</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>663</u> Order granting application for compensation (related document <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 05/28/2020. (Admin.)
06/01/2020	<u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion

	for leave). (Annable, Zachery)
06/01/2020	<u>679</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for April 2020) (Annable, Zachery)
06/01/2020	<u>680</u> Certificate of service re: 1) <i>Third Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> ; 2) <i>Summary Sheet and Sixth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020</i> ; and 3) <i>Summary Sheet and Fifth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2020 to and Including March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/01/2020	<u>681</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; and 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing [Attached hereto as Exhibit B]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<u>682</u> Certificate of service re: <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<u>683</u> Certificate of service re: <i>Documents Served on May 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>653</u> Declaration re: ( <i>Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to</i>

	<p><i>Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>654</u> Witness and Exhibit List for May 26, 2020 <i>Hearing</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>, <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i>, <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer</i> (, <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's At). filed by Debtor Highland Capital Management, L.P., <u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.), <u>658</u> Notice (Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/02/2020	<p><u>684</u> Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)) Responses due by 6/9/2020. (Ecker, C.)</p>
06/02/2020	<p><u>685</u> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s)<u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)</p>
06/02/2020	<p><u>686</u> Debtor-in-possession monthly operating report for filing period April 1, 2020 to April 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
06/03/2020	<p><u>687</u> Response opposed to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
06/03/2020	<p><u>688</u> Support/supplemental document(<i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>687</u> Response). (Attachments: # 1</p>

	<p>Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # <u>2</u> Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # <u>3</u> Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # <u>4</u> Exhibit 4—NY D.I. 411: March 13, 2017 Decision # <u>5</u> Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # <u>6</u> Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # <u>7</u> Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # <u>8</u> Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # <u>9</u> Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # <u>10</u> Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # <u>11</u> Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # <u>12</u> Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only) (Annable, Zachery)</p>
06/03/2020	<p><u>689</u> Motion to file document under seal.(<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Protective Order Filed in State Court Litigation) (Annable, Zachery)</p>
06/03/2020	<p><u>690</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
06/03/2020	<p><u>691</u> Motion to file document under seal.<i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)</p>
06/03/2020	<p><u>692</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)<i>Redacted Version (Pending Ruling on Motion to Seal at D.I. 691) of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A (slip sheet, pending ruling on motion to seal) # <u>2</u> Exhibit Exhibit B slip sheet (pending ruling on motion to seal) # <u>3</u> Exhibit Exhibit C slip sheet (pending ruling on motion to seal) # <u>4</u> Exhibit Exhibit D slip sheet (pending ruling on motion to seal) # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet (pending ruling on motion to seal) # <u>9</u> Exhibit Exhibit I slip sheet (pending ruling on motion to seal) # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit L # <u>12</u> Exhibit Exhibit M # <u>13</u> Exhibit Exhibit N) (Platt, Mark)</p>
06/03/2020	<p><u>693</u> Support/supplemental document<i>Exhibit K</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>692</u> Objection). (Platt, Mark)</p>
06/03/2020	<p><u>694</u> Joinder by filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>692</u> Objection). (Shaw, Brian)</p>
06/04/2020	<p><u>695</u> Motion to appear pro hac vice for Robert J. Feinstein. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
06/04/2020	<p>Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27814231, amount \$ 100.00 (re: Doc# <u>695</u>). (U.S. Treasury)</p>

06/04/2020	<p><u>696</u> Amended Motion to file document under seal. <i>AMENDED MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)</p>
06/04/2020	<p><u>697</u> Certificate of service re: <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>660</u> Amended Notice (<i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>658</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/04/2020	<p><u>698</u> Certificate of service re: <i>Documents Served on May 26, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>661</u> Order granting application for compensation (related document <u>569</u>) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>662</u> Order granting application for compensation (related document <u>570</u>) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>663</u> Order granting application for compensation (related document <u>607</u>) granting for Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.), <u>664</u> Order granting application for compensation (related document <u>608</u>) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.), <u>665</u> Amended Order granting application for compensation (related document <u>570</u>) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>666</u> Amended Order granting application for compensation (related document <u>569</u>) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>667</u> Order granting application for compensation (related document <u>609</u>) granting for Hayward &amp; Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.), <u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.), <u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document <u>605</u>) Entered on 5/26/2020. (Ecker, C.), <u>670</u> Order granting application for compensation (related document <u>602</u>) granting for Foley Gardere, Foley &amp; Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)). (Kass, Albert)</p>
06/04/2020	<p><u>699</u> Certificate of service re: <i>Summary Sheet and Sixth Monthly Application of FTI Consulting for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95.</i> Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
06/04/2020	<p><u>700</u> Motion to redact/restrict Restrict From Public View (related document(s):<u>692</u>) (Fee Amount \$25) Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark)</p>
06/04/2020	<p>Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] ( 25.00). Receipt number 27815698, amount \$ 25.00 (re: Doc# <u>700</u>). (U.S. Treasury)</p>

06/04/2020	<u>701</u> Objection to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)Redacted Version of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Exhibit Exhibit D # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet # <u>9</u> Exhibit Exhibit I slip sheet # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit K # <u>12</u> Exhibit Exhibit L # <u>13</u> Exhibit Exhibit M # <u>14</u> Exhibit Exhibit N) (Platt, Mark)
06/04/2020	<u>702</u> Notice of Appearance and Request for Notice by Thomas M. Melsheimer filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent. (Melsheimer, Thomas)
06/04/2020	<u>703</u> Motion to appear pro hac vice for David Neier. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Melsheimer, Thomas)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27816362, amount \$ 100.00 (re: Doc# <u>703</u> ). (U.S. Treasury)
06/05/2020	<u>704</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/05/2020	<u>705</u> Order granting motion to appear pro hac vice adding David Neier for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>703</u> ) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>706</u> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document # <u>695</u> ) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>707</u> Certificate of service re: 1) <i>Fourth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>679</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for April 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/05/2020	<u>708</u> Certificate of service re: <i>Order Approving Fourth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent

	Kurtzman Carson Consultants LLC (related document(s) <a href="#">685</a> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s) <a href="#">638</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)). (Kass, Albert)
06/05/2020	<a href="#">709</a> Certificate of service re: 1) Debtor's Objection to UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action; 2) Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay; and 3) Debtor's Motion for Entry of an Order Authorizing Filing Under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">687</a> Response opposed to (related document(s): <a href="#">644</a> Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">688</a> Support/supplemental document(Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">687</a> Response). (Attachments: # 1 Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # 2 Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # 3 Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # 4 Exhibit 4—NY D.I. 411: March 13, 2017 Decision # 5 Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # 6 Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # 7 Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # 8 Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # 9 Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # 10 Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # 11 Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # 12 Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only) filed by Debtor Highland Capital Management, L.P., <a href="#">689</a> Motion to file document under seal.(Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Protective Order Filed in State Court Litigation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/07/2020	<a href="#">710</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">706</a> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document <a href="#">695</a> ) Entered on 6/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/07/2020. (Admin.)
06/08/2020	<a href="#">711</a> Order granting motion to seal documents (related document # <a href="#">696</a> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<a href="#">712</a> Certificate of No Objection filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <a href="#">593</a> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)
06/08/2020	<a href="#">713</a> Order granting Motion to Redact (Related Doc # <a href="#">700</a> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<b>714 SEALED document regarding: Redeemer Committee's Objection to UBS's Motion for Relief From The Automatic Stay (unredacted version) per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <a href="#">711</a> Order on motion to seal). (Platt, Mark)
06/08/2020	<b>715 SEALED document regarding: Exhibit A, Original Synthetic Warehouse Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <a href="#">711</a> Order on motion to seal). (Platt, Mark)

06/08/2020	<b>716 SEALED document regarding: Exhibit B, Original Engagement Ltr. per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b>717 SEALED document regarding: Exhibit C, Original Cash Warehouse Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b>718 SEALED document regarding: Exhibit D, Expert Report of Louis G. Dudney per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b>719 SEALED document regarding: Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b>720 SEALED document regarding: Exhibit H, UBS and Crusader Fund Settlement Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b>721 SEALED document regarding: Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<u>722</u> Order granting motion to seal documents (related document # <u>689</u> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<b>723 SEALED document regarding: Appendix B of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>722</u> Order on motion to seal). (Annable, Zachery)
06/08/2020	<u>724</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>704</u> <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2020	<u>725</u> Motion to appear pro hac vice for Sarah Tomkowiak. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
06/10/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27830926, amount \$ 100.00 (re: Doc# <u>725</u> ). (U.S. Treasury)
06/10/2020	<u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)

06/10/2020	<u>727</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.). (Hoffman, Juliana)
06/10/2020	<u>728</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66.). (Hoffman, Juliana)
06/10/2020	<u>729</u> Notice of Subpoena of Highland Capital Management, L.P. filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/11/2020	<u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27834758, amount \$ 100.00 (re: Doc# <u>730</u> ). (U.S. Treasury)
06/11/2020	<u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document # <u>725</u> ) Entered on 6/11/2020. (Okafor, M.)
06/11/2020	<u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.).
06/11/2020	<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Reply # <u>3</u> Exhibit 1 # <u>4</u> Exhibit 2 # <u>5</u> Exhibit 3 # <u>6</u> Exhibit 4 # <u>7</u> Exhibit 5 # <u>8</u> Exhibit 6 # <u>9</u> Exhibit 7 # <u>10</u> Exhibit 8 # <u>11</u> Exhibit 9 # <u>12</u> Exhibit 10 # <u>13</u> Exhibit 11 # <u>14</u> Exhibit 12 # <u>15</u> Exhibit 13 # <u>16</u> Exhibit 14) (Sosland, Martin)
06/11/2020	<u>734</u> INCORRECT EVENT USED: See # <u>746</u> for correction. Motion for leave to <i>File Documents Under Seal with UBS's Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>733</u> Motion for leave) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – State Court Protective Stipulation) (Sosland, Martin) Modified on 6/15/2020 (Ecker, C.).
06/11/2020	<u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.) (Entered: 06/15/2020)
06/12/2020	<u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K)). (Ellison, T.)

06/12/2020	<u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document # <u>730</u> ) Entered on 6/12/2020. (Okafor, M.)
06/12/2020	<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
06/12/2020	<u>738</u> Certificate of No Objection Regarding Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan). (Annable, Zachery)
06/12/2020	<u>739</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>740</u> Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u> , (Annable, Zachery)
06/12/2020	<u>742</u> Witness and Exhibit List <i>for June 15, 2020 Hearing</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181.). (Sosland, Martin)
06/12/2020	<u>743</u> Amended Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND FIRST AMENDED WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>740</u> List (witness/exhibit/generic)). (Platt, Mark)
06/13/2020	<u>744</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document <u>725</u> ) Entered on 6/11/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/13/2020. (Admin.)
06/14/2020	<u>745</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u> ) Entered on 6/12/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/14/2020. (Admin.)
06/15/2020	<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule

	9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <a href="#">459</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <a href="#">1</a> Exhibit A—Proposed Order) (Annable, Zachery)
06/15/2020	<a href="#">748</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">747</a> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <a href="#">459</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <a href="#">1</a> Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">747</a> , (Annable, Zachery)
06/15/2020	<a href="#">754</a> Hearing held on 6/15/2020. (RE: related document(s) <a href="#">644</a> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 06/17/2020)
06/15/2020	<a href="#">770</a> Court admitted exhibits date of hearing June 15, 2020 (RE: related document(s) <a href="#">644</a> Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC., (COURT ADMITTED ALL EXHIBIT'S TO ALL THE ATTACHED OBJECTOR'S OBJECTION ALL EXCEPT FOR EXHIBIT #D (EXPERT REPORT OF LOUIS G. DUDLEY; THAT IS FILED UNDER SEAL); ON THE REDEEMER COMMITTEE OBJECTION; THE FOLLOWING EXHIBIT'S ATTACHED TO THE MOTION OF UBS'S MOTION TO LIFT STAY ALL ADMITTED; # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G # <a href="#">8</a> Exhibit H # <a href="#">9</a> Exhibit I # <a href="#">10</a> Exhibit J # <a href="#">11</a> Exhibit K; ALSO PLEASE SEE WITNESS AND EXHIBIT LIST OF DEBTOR; CREDITOR UBS AND REDEEMER COMMITTEE) (Edmond, Michael) (Entered: 06/23/2020)
06/16/2020	<a href="#">749</a> ENTER AN ERROR; NO PDF ATTACHED: Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily (Edmond, Michael) Modified on 6/16/2020 (Edmond, Michael).
06/16/2020	<a href="#">750</a> Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily. (Edmond, Michael)
06/16/2020	<a href="#">751</a> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # <a href="#">1</a> Exhibit A) (O'Neil, Holland)
06/16/2020	<a href="#">752</a> Notice of hearing ( <i>Notice of August 6, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/16/2020	<a href="#">753</a> Notice of hearing ( <i>Notice of July 14, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/17/2020	<a href="#">755</a> Transcript regarding Hearing Held 06/15/2020 (127 pages) RE: Motion for Relief from the Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY

	<p>AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 754 Hearing held on 6/15/2020. (RE: related document(s) 644 (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez &amp; Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.)). Transcript to be made available to the public on 09/15/2020. (Rehling, Kathy)</p>
06/17/2020	<p><u>756</u> Certificate of service re: <i>1) WebEx Meeting Invitation to participate electronically in the hearing on Monday, June 15, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)). (Kass, Albert)</p>
06/17/2020	<p><u>757</u> Certificate of service re: <i>Fifth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/17/2020	<p><u>758</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice of Alan J. Kornfeld to Represent Highland Capital Management, L.P.; and 2) Order Approving Fifth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.)). (Kass, Albert)</p>
06/17/2020	<p><u>759</u> Certificate of service re: <i>Documents Served on June 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u>) Entered on 6/12/2020. (Okafor, M.), <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>739</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit</p>

	A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	<u>760</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing Regarding Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; to be Held on July 8, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	<u>761</u> Certificate of service re: 1) <i>Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020; 2) Notice of August 6, 2020 Omnibus Hearing Date; and 3) Notice of July 14, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>752</u> Notice of hearing( <i>Notice of August 6, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>753</u> Notice of hearing ( <i>Notice of July 14, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/18/2020	<u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
06/18/2020	<u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document # <u>604</u> ) Entered on 6/18/2020. (Bradden, T.)
06/18/2020	<u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document # <u>593</u> ) Entered on 6/18/2020. (Bradden, T.)
06/19/2020	<u>765</u> Order denying motion for relief from stay by Interested Parties UBS AG London Branch , UBS Securities LLC (related document # <u>644</u> ) Entered on 6/19/2020. (Okafor, M.)

06/20/2020	<u>766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document <u>593</u> ) Entered on 6/18/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 06/20/2020. (Admin.) (Entered: 06/21/2020)
06/22/2020	<u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. (Hoffman, Juliana)
06/22/2020	<u>768</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95.). (Hoffman, Juliana)
06/22/2020	<u>769</u> Certificate of service re: 1) <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Foley Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020</i> ; and 2) <i>Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document <u>604</u> ) Entered on 6/18/2020. (Bradden, T.)). (Kass, Albert)
06/23/2020	<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. (Annable, Zachery)
06/23/2020	<u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
06/23/2020	<u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. (Pomerantz, Jeffrey)
06/23/2020	<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/23/2020	<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

06/23/2020	<p><u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u>, (Annable, Zachery)</p>
06/23/2020	<p><u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u>, (Annable, Zachery)</p>
06/24/2020	<p><u>778</u> Certificate of service re: <i>Summary Sheet and Seventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75.</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
06/24/2020	<p><u>779</u> Certificate of service re: <i>Documents Served on 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. filed by Debtor Highland Capital Management, L.P., <u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u>, filed by Debtor Highland Capital Management, L.P., <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. filed by Debtor Highland Capital Management, L.P., <u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u>, filed by Debtor Highland Capital Management, L.P., <u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related</i></p>

	<i>Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/25/2020	<u>780</u> Notice of Subpoena of David Klos filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/26/2020	<u>781</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
06/26/2020	<u>782</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ]). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 1-A # <u>3</u> Exhibit 1-B # <u>4</u> Exhibit 1-C # <u>5</u> Exhibit 1-D # <u>6</u> Exhibit 1-E # <u>7</u> Exhibit 1-F # <u>8</u> Exhibit 1-G # <u>9</u> Exhibit 1-H # <u>10</u> Exhibit 1-I # <u>11</u> Exhibit 2 # <u>12</u> Exhibit 3 # <u>13</u> Exhibit 4 # <u>14</u> Exhibit 5 # <u>15</u> Exhibit 6 # <u>16</u> Exhibit 7 # <u>17</u> Exhibit 8 # <u>18</u> Exhibit 9 # <u>19</u> Exhibit 10 # <u>20</u> Exhibit 11 # <u>21</u> Exhibit 12 # <u>22</u> Exhibit 13 # <u>23</u> Exhibit 14 # <u>24</u> Exhibit 15 # <u>25</u> Exhibit 16) (Kane, John)
06/26/2020	<u>783</u> <b>SEALED document regarding: Exhibit 11 – AROF MUFG Bank Statement June 2018_ Highland_PEO-032620 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>784</u> <b>SEALED document regarding: Exhibit 12 – GG and HCM Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>785</u> <b>SEALED document regarding: Exhibit 13 – GG and HCM Amendment to Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>786</u> <b>SEALED document regarding: Exhibit 14 – Exercise of Discretion by Trustee The Get Good Nonexempt Trust (Fully Executed) dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>787</u> <b>SEALED document regarding: Exhibit 15 – Dynamic Income CLO Holdco Side Letter (\$2M Subscription) dated January 10, 2017 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>788</u> <b>SEALED document regarding: Exhibit 16 – Highland Capital Management, L.P. December 31, 2016 Final Opinion per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/27/2020	<u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ]). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
06/29/2020	<u>790</u> COURTS NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON June 30, 2020 at 09:30 AM; (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] filed by Creditor CLO

	Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). (Edmond, Michael)
06/30/2020	<u>791</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>793</u> Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion). (Edmond, Michael)
06/30/2020	<u>794</u> Court admitted exhibits date of hearing June 30, 2020 (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (COURT ADMITTED MOVANT'S CLO HOLDCO, LTD., EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 & #16; ALSO ADMITTED DEFENDANT'S UNSECURED CREDITOR'S COMMITTEE EXHIBIT'S #1, #2 & #3) (Edmond, Michael)
06/30/2020	<u>795</u> Application for compensation ( <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A April 2020 Invoice) (Annable, Zachery)
07/01/2020	<u>796</u> Request for transcript regarding a hearing held on 6/30/2020. The requested turn-around time is daily. (Edmond, Michael)
07/01/2020	<u>797</u> Certificate of service re: <i>re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 Through May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>781</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period</i>

	<i>from May 1, 2020 through May 31, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2020	<u>798</u> Certificate of service re: <i>re: The Official Committee of Unsecured Creditors' Witness and Exhibit List for the June 30, 2020 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry/ <i>Motion for Remittance of Funds Held in Registry of Court</i> ). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/01/2020	<u>799</u> Certificate of service re: <i>Cover Sheet and Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>795</u> Application for compensation ( <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A April 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
07/02/2020	<u>800</u> Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/02/2020	<u>801</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2020	<u>802</u> Transcript regarding Hearing Held 06/30/2020 (100 pages) RE: Motion for Remittance of Funds (590). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 793 Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital

	Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion). Transcript to be made available to the public on 09/30/2020. (Rehling, Kathy)
07/02/2020	<u>803</u> BNC certificate of mailing. (RE: related document(s) <u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/02/2020. (Admin.)
07/03/2020	<u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
07/06/2020	<u>805</u> Notice of hearing ( <i>Notice of September 10, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/07/2020	<u>806</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>801</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2020	<u>807</u> Certificate of service re: <i>Statement of the Official Committee of Unsecured Creditors in Response to the Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/08/2020	<u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. (Montgomery, Paige)
07/08/2020	<u>809</u> Certificate of service re: <i>Notice of September 10, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>805</u> Notice of hearing ( <i>Notice of September 10, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

07/08/2020	<p><u>812</u> Hearing held on 7/8/2020. (RE: related document(s)<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day extension). Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)</p>
07/08/2020	<p><u>813</u> Hearing held on 7/8/2020. (RE: related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)</p>
07/09/2020	<p><u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
07/09/2020	<p><u>811</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i>). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)</p>
07/09/2020	<p><u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</p>
07/09/2020	<p><u>815</u> Request for transcript regarding a hearing held on 7/8/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
07/09/2020	<p><u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>459</u> O) Entered on 7/9/2020. (Okafor, M.)</p>
07/10/2020	<p><u>817</u> Transcript regarding Hearing Held 07/08/2020 (58 pages) RE: Motions to Extend Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/8/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>812</u> Hearing held on 7/8/2020. (RE: related document(s)<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day</p>

	extension). Debtors counsel to upload order.), 813 Hearing held on 7/8/2020. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.)). Transcript to be made available to the public on 10/8/2020. (Rehling, Kathy)
07/10/2020	<u>818</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere.). (O'Neil, Holland)
07/10/2020	<u>819</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere). (O'Neil, Holland)
07/10/2020	<u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.)
07/10/2020	<u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc # <u>474</u> ) Entered on 7/10/2020. (Okafor, M.)
07/10/2020	<u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct.). (Annable, Zachery)
07/13/2020	<u>823</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/13/2020	<u>824</u> Certificate of service re: <i>Documents Served on July 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>811</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>

	<i>(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>459</u> O) Entered on 7/9/2020. (Okafor, M.)). (Kass, Albert)</i>
07/13/2020	<u>825</u> Order denying motion to reclaim funds from the registry (Related Doc # <u>590</u> ) Entered on 7/13/2020. (Okafor, M.)
07/13/2020	<u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) ). (Annable, Zachery)</i>
07/13/2020	<u>827</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management, L.P. and Acis Capital Management GP, LLC.. Filed by Interested Party James Dondero. (Assink, Bryan)
07/13/2020	<u>828</u> Certificate of service re: 1) Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 2) Agreed Order Regarding Deposit of Funds into the Registry of the Court; and 3) Debtors Witness and Exhibit List with Respect to (A) the Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services Nunc Pro Tunc to March 15 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.), <u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc <u>474</u> ) Entered on 7/10/2020. (Okafor, M.), <u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2020	<u>829</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>767</u> Application for compensation Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$34). (Hoffman, Juliana)
07/14/2020	<u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. (Hoffman, Juliana)
07/14/2020	<u>831</u> Application for compensation Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured

	Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F) (Hoffman, Juliana)
07/14/2020	<u>832</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
07/14/2020	<u>833</u> Request for transcript regarding a hearing held on 7/14/2020. The requested turn-around time is daily. (Edmond, Michael)
07/14/2020	<u>836</u> Court admitted exhibits date of hearing July 14, 2020 (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P., And <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020 filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6 & #7) (Edmond, Michael) (Entered: 07/15/2020)
07/14/2020	<u>862</u> Hearing held on 7/14/2020. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/14/2020	<u>863</u> Hearing held on 7/14/2020. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/15/2020	<u>834</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan P). (Annable, Zachery)
07/15/2020	<u>835</u> Motion to appear pro hac vice for James A. Wright III. Fee Amount \$100 Filed by Interested Parties NexPoint Real Estate Strategies Fund, Highland Global Allocation Fund, Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., Highland Total Return Fund, Highland Fixed Income Fund, Highland Socially Responsible Equity Fund, Highland Small-Cap Equity Fund, Highland Funds II and its series, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland/iBoxx Senior Loan ETF, Highland Healthcare Opportunities Fund, Highland Funds I and its series, NexPoint

	Advisors, L.P., Highland Capital Management Fund Advisors, L.P. (Varshosaz, Artoush)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27927823, amount \$ 100.00 (re: Doc# <u>835</u> ). (U.S. Treasury)
07/15/2020	<u>837</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by John Honis, Rand PE Fund Management, LLC, Rand PE Fund I, LP, Rand Advisors, LLC, Hunter Mountain Investment Trust, Beacon Mountain, LLC, Atlas IDF, LP, Atlas IDF, GP, LLC. (Keiffer, Edwin)
07/15/2020	<u>838</u> INCORRECT ENTRY: Attorney to amend and refile. Motion to appear pro hac vice for Stephen G. Topetzes. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush) MODIFIED on 7/16/2020 (Ecker, C.).
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27928069, amount \$ 100.00 (re: Doc# <u>838</u> ). (U.S. Treasury)
07/15/2020	<u>839</u> Response opposed to (related document(s): <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/15/2020	<u>840</u> INCORRECT ENTRY: FILED WITHOUT EXHIBITS. Notice of Appearance and Request for Notice by Paul Richard Bessette filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul) Modified on 7/15/2020 (Rielly, Bill).
07/15/2020	<u>841</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/15/2020	<u>842</u> Notice of Appearance and Request for Notice by Amanda Melanie Rush filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>843</u> Motion to appear pro hac vice for Tracy K. Stratford. Fee Amount \$100 Filed by Interested Party CCS Medical, Inc. (Rush, Amanda)

07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27928305, amount \$ 100.00 (re: Doc# <u>843</u> ). (U.S. Treasury)
07/15/2020	<u>844</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>845</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2020	<u>846</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Exhibit A) (Kane, John)
07/15/2020	<u>847</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors, L.P., VineBrook Homes, Trust, Inc., NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Partners, LLC, NexPoint Hospitality Trust, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, NexPoint Real Estate Finance Inc.. (Drawhorn, Lauren)
07/15/2020	<u>848</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>845</u> Objection). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2020	<u>849</u> Amended Motion to appear pro hac vice for Stephen G. Topetzes. (related document: <u>838</u> ) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
07/16/2020	<u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u> , (Annable, Zachery)
07/16/2020	<u>851</u> Notice of hearing ( <i>Notice of September 17, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/16/2020	

	<u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s) <u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.)
07/16/2020	<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document # <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)
07/16/2020	<u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u> ) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
07/16/2020	<u>855</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party MGM Holdings, Inc.. (Drawhorn, Lauren)
07/16/2020	<u>856</u> Notice of Appearance and Request for Notice by Artoush Varshosaz filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/16/2020	<u>857</u> Motion to appear pro hac vice for Mark M. Maloney. Fee Amount \$100 Filed by Interested Party Highland CLO Funding, Ltd. (Bessette, Paul)
07/16/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27932614, amount \$ 100.00 (re: Doc# <u>857</u> ). (U.S. Treasury)
07/16/2020	<u>858</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul)
07/16/2020	<u>859</u> Declaration re: <u>858</u> <i>Objection</i> filed by Interested Party Highland CLO Funding, Ltd. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. ). (Attachments: # <u>1</u> Exhibit A) (Bessette, Paul)
07/16/2020	<u>860</u> Certificate of service re: <i>1) Order Denying Motion for Remittance of Funds Held in Registry of Court; and 2) Stipulation by and Between the Debtor and the Official Committee of Unsecured Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>825</u> Order denying motion to reclaim funds from the registry (Related Doc <u>590</u> ) Entered on 7/13/2020. (Okafor, M.), <u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
07/16/2020	<u>861</u> Certificate of service re: <i>1) Summary Sheet and Seventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020; and 2) Summary Sheet and Second Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period</i>

	<p>from March 1, 2020 Through and Including May 31, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>830</u>) Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. filed by Financial Advisor FTI Consulting, Inc., <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/17/2020	<p><u>864</u> Transcript regarding Hearing Held 07/14/2020 (134 pages) RE: Applications to Employ. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>863</u> Hearing held on 7/14/2020. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.)). Transcript to be made available to the public on 10/15/2020. (Rehling, Kathy)</p>
07/17/2020	<p><u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document # <u>843</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>835</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>849</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. (Annable, Zachery)</p>
07/17/2020	

	<p><u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor Committee Official Committee of Unsecured Creditors) (<i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
07/17/2020	<p><u>870</u> Declaration re: (<i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>)). (Annable, Zachery)</p>
07/17/2020	<p><u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). (Hesse, Gregory)</p>
07/17/2020	<p><u>872</u> Response opposed to (related document(s): <u>841</u> Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>844</u> Objection filed by Interested Party CCS Medical, Inc., <u>845</u> Objection filed by Debtor Highland Capital Management, L.P., <u>846</u> Objection filed by Creditor CLO Holdco, Ltd., <u>847</u> Objection filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>855</u> Objection filed by Interested Party MGM Holdings, Inc., <u>858</u> Objection filed by Interested Party Highland CLO Funding, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)</p>
07/17/2020	<p><u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u>, (Annable, Zachery)</p>
07/19/2020	<p><u>874</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document <u>843</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)</p>
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	<p><u>875</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>835</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)</p>
07/19/2020	<p><u>876</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetztes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>849</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)</p>
07/20/2020	<p><u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. (Hoffman, Juliana)</p>
07/20/2020	<p><u>878</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)</p>
07/20/2020	<p><u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)</p>
07/20/2020	<p><u>880</u> Certificate of service re: <i>1) Debtor's Objection to Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>845</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>848</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>845</u> Objection). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/20/2020	<p><u>881</u> Certificate of service re: <i>Documents Served on July 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order <i>(Debtor's Motion</i></p>

	<p>for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u>, filed by Debtor Highland Capital Management, L.P., <u>851</u> Notice of hearing (<i>Notice of September 17, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s)<u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.), <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Kass, Albert)</p>
07/21/2020	<p><u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document # <u>857</u>) Entered on 7/21/2020. (Okafor, M.)</p>
07/21/2020	<p><u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. (Hoffman, Juliana)</p>
07/21/2020	<p><u>894</u> Hearing held on 7/21/2020. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion granted in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM communications, and as to Atlass communications with outside law firms. Counsel to submit order. ) (Edmond, Michael) (Entered: 07/24/2020)</p>
07/21/2020	<p><u>895</u> Hearing held on 7/21/2020. (RE: related document(s)<u>810</u> Motion for protective order (Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion denied in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)</p>
07/21/2020	<p><u>896</u> Hearing held on 7/21/2020. (RE: related document(s)<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R.</p>

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	Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.) (Edmond, Michael) (Entered: 07/24/2020)
07/22/2020	<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
07/22/2020	<u>885</u> INCORRECT ENTRY: EVENT CODE. Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) Modified on 7/22/2020 (Rielly, Bill).
07/22/2020	<u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
07/22/2020	<u>887</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
07/22/2020	<u>888</u> Request for transcript regarding a hearing held on 7/21/2020. The requested turn-around time is daily. (Edmond, Michael)
07/22/2020	<u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
07/22/2020	<u>890</u> Certificate of service re: <i>Documents Served on July 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. filed by Debtor Highland Capital Management, L.P., <u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor Committee Official Committee of Unsecured Creditors) ( <i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>870</u> Declaration re: ( <i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i> ). filed by Debtor Highland Capital Management, L.P., <u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>604</u> Application to

	<p><i>employ Hunton Andrews Kurth LLP as Special Counsel (Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)). filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
07/23/2020	<p><u>891</u> Objection to claim(s) 3 of Creditor(s) ACIS Capital Management L.P. and ACIS Capital Management GP, LLC.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
07/23/2020	<p><u>892</u> Certificate of service re: <i>Amended Ninth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2020	<p><u>893</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document <u>857</u>) Entered on 7/21/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 07/23/2020. (Admin.)</p>
07/24/2020	<p><u>897</u> Transcript regarding Hearing Held 07/21/20 RE: DOCS 808 and 810. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/22/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Transcripts Plus, Inc., Telephone number 215-862-1115 CourtTranscripts@aol.com. (RE: related document(s) 896 Hearing held on 7/21/2020. (RE: related document(s)<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.)). Transcript to be made available to the public on 10/22/2020. (Hartmann, Karen)</p>
07/24/2020	<p><u>898</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eighth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2020 to and Including June 30, 2020; and 2) Summary Cover Sheet and Second Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of</i></p>

	<p><i>Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
07/27/2020	<p><u>899</u> Certificate of No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>795</u> Application for compensation (<i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i>) for Hayward &amp; Assoc). (Annable, Zachery)</p>
07/27/2020	<p><u>900</u> Certificate of service re: <i>Documents Served on July 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>887</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/28/2020	<p><u>901</u> INCORRECT ENTRY: See # <u>902</u> for correction. Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.) Modified on 7/28/2020 (Ecker, C.).</p>
07/28/2020	<p><u>902</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.)</p>
07/28/2020	<p><u>903</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG</p>

	London Branch , UBS Securities LLC (Ecker, C.)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	Receipt Number 00338615, Fee Amount \$30,715.92 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338617, Fee Amount \$20,830.29 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338616, Fee Amount \$84,062.32 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/30/2020	<u>904</u> Notice of Appearance and Request for Notice <i>Chad Timmons, Emily M. Hahn, Larry R. Boyd</i> by Chad D. Timmons filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Timmons, Chad)
07/30/2020	<u>905</u> Amended Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>800</u> Operating report). (Annable, Zachery)
07/30/2020	<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order and Schedules 1-7) (Annable, Zachery)
07/30/2020	<u>907</u> Notice of hearing ( <i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to

	<p>claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>. (Annable, Zachery)</p>
07/31/2020	<p><u>908</u> Response opposed to (related document(s): <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Patel, Rakhee)</p>
08/03/2020	<p><u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>910</u> Order granting motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document # <u>733</u>) Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>911</u> Order granting motion to seal documents (related document # <u>746</u>) Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>912</u> Order directing mediation (RE: related document(s)<u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)</p>
08/03/2020	<p><u>913</u> Debtor-in-possession monthly operating report for filing period June 1, 2020 to June 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
08/03/2020	<p><u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Kane, John)</p>

08/04/2020	<p><u>915</u> Joinder by <i>NexPoint RE Entities' Joinder to CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)<u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Drawhorn, Lauren)</p>
08/04/2020	<p><u>916</u> Certificate of service re: 1) <i>Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims; and 2) Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P., <u>907</u> Notice of hearing (<i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation;</p>

	<p>Moody's Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/05/2020	<p><u>917</u> Application for compensation (<i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&amp;A May 2020 Invoice) (Annable, Zachery)</p>
08/05/2020	<p><u>918</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5). (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)</p>
08/05/2020	<p><u>919</u> Certificate of service re: <i>1) Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by Sixty Days; and 2) Order Directing Mediation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.), <u>912</u> Order directing mediation (RE: related document(s)<u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)). (Kass, Albert)</p>
08/05/2020	<p><u>920</u> Certificate of No Objection (Amended) filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>918</u> Certificate (generic)). (Hoffman, Juliana)</p>
08/05/2020	<p><u>921</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN</p>

	PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Annable, Zachery)
08/06/2020	<u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
08/06/2020	<u>923</u> Notice of Appearance and Request for Notice by Jared M. Slade filed by Interested Party NexBank. (Slade, Jared)
08/06/2020	<u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A – Invoices # <u>2</u> Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland)
08/06/2020	<u>925</u> Certificate of service re: <i>re: 1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>917</u> Application for compensation ( <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A May 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>921</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2020	<u>926</u> Withdrawal of claim(s) Claim has been satisfied. Claim: 9 Filed by Creditor Gray Reed & McGraw LLP. (Brookner, Jason)
08/07/2020	<u>927</u> Joinder by filed by Interested Party NexBank (RE: related document(s) <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Slade, Jared)
08/07/2020	<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # <u>1</u> Exhibit 18 # <u>2</u> Exhibit 19) (Annable, Zachery)
08/07/2020	<u>929</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital

	Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/07/2020	<u>930</u> Response opposed to (related document(s): <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A) (Montgomery, Paige)
08/07/2020	<u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A June 2020 Invoice) (Annable, Zachery)
08/07/2020	<u>932</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order Proposed Order Granting Motion to Seal) (Platt, Mark)
08/07/2020	<u>933</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # <u>2</u> Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # <u>3</u> Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # <u>4</u> Exhibit Exhibit 4 # <u>5</u> Exhibit Exhibit 5 # <u>6</u> Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # <u>7</u> Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # <u>8</u> Exhibit Exhibit 8 # <u>9</u> Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # <u>10</u> Exhibit Exhibit 10 # <u>11</u> Exhibit Exhibit 11 # <u>12</u> Exhibit Exhibit 12 # <u>13</u> Exhibit Exhibit 13 # <u>14</u> Exhibit Exhibit 14 # <u>15</u> Exhibit Exhibit 15 # <u>16</u> Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit Exhibit 17 # <u>18</u> Exhibit Exhibit 18 # <u>19</u> Exhibit Exhibit 19 # <u>20</u> Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # <u>21</u> Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # <u>22</u> Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) (Platt, Mark)
08/10/2020	<u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. (Hoffman, Juliana)
08/11/2020	<u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u> Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020 (Rielly, Bill)
08/11/2020	<u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for

	Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. (Pomerantz, Jeffrey)
08/11/2020	<u>937</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended t)</i> . (Pomerantz, Jeffrey)
08/11/2020	<u>938</u> Certificate of service re: 1) <i>Cover Sheet and Ninth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 Through July 31, 2020</i> ; and 2) <i>Cover Sheet and Second Interim Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/11/2020	<u>939</u> Certificate of service re: 1) <i>Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ; and 2) <i>Notice of Status Conference; to be Held on September 29, 2020 at 1:30 p.m. (Central Time)</i> ; and 3) <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>929</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A June 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
08/11/2020	<u>940</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Friday, August 14, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Summary Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period From June 1, 2020 to and Including June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/12/2020	<u>941</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,78). (Hoffman, Juliana)
08/12/2020	<u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> and <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, ) Entered on 8/12/2020. (Okafor, M.). Modified linkage on 10/1/2020 (Okafor, M.).</i>
08/12/2020	<u>943</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
08/12/2020	<u>944</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/12/2020	<u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Plan)(Annable, Zachery)
08/13/2020	<u>946</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Garder). (O'Neil, Holland)
08/13/2020	<u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) ( <i>Joint Motion to Continue Status Conference</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/13/2020	<u>948</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>950</u> Order granting motion to seal documents (related document # <u>932</u> ) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>951</u> Order granting joint motion to continue hearing on (related document # <u>947</u> ) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.)

08/13/2020	<u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u> , (Annable, Zachery)
08/13/2020	<b>953 SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC AND JOINDER IN THE DEBTOR'S OBJECTION per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>950</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit Exhibit 1 – Original Synthetic Warehouse Agreement # <u>2</u> Exhibit Exhibit 2 Original Engagement Ltr. # <u>3</u> Exhibit Exhibit 3 Original Cash Warehouse Agreement # <u>4</u> Exhibit Exhibit 6 Expert Report of Louis G. Dudney # <u>5</u> Exhibit Exhibit 7 March 20, 2009 Termination Settlement and Release Agreement # <u>6</u> Exhibit Exhibit 9 UBS and Crusader Fund Settlement Agreement # <u>7</u> Exhibit Exhibit 16 Unredacted version of UBS's Second Amended Complaint # <u>8</u> Exhibit Exhibit 20 UBS's Pre-Trial Brief ISO Bifurcation # <u>9</u> Exhibit Exhibit 21 UBS and Credit Strategies Settlement Agreement # <u>10</u> Exhibit Exhibit 22 Crusader Fund scheme of Arrangement and Joint Plan of Distribution) (Platt, Mark)
08/13/2020	<u>954</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/13/2020	<u>955</u> Order granting motion to seal documents (related document # <u>948</u> ) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<b>956 SEALED document regarding: Plan of Reorganization of Highland Capital Management, L.P. per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Annable, Zachery)
08/13/2020	<b>957 SEALED document regarding: Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P. per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A—Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
08/13/2020	<u>958</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u> Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020) No. of Notices: 2. Notice Date 08/13/2020. (Admin.)
08/14/2020	<u>959</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65.). (Hoffman, Juliana)

08/14/2020	<u>960</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26.). (Hoffman, Juliana)
08/14/2020	<u>961</u> Certificate of service re: <i>Cover Sheet and Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/14/2020	<u>962</u> Certificate of service re: 1) <i>Order Resolving Discovery Motions and Objections Thereto</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> ) Entered on 8/12/2020. (Okafor, M.), <u>943</u> <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/17/2020	<u>963</u> Motion to file document under seal. Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Chiarello, Annmarie)
08/18/2020	<u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—Invoices) (Annable, Zachery)
08/18/2020	<u>965</u> Order granting motion to seal documents (related document # <u>963</u> ) Entered on 8/18/2020. (Okafor, M.)
08/18/2020	<b>966 SEALED document regarding: email correspondence produced by Highland Capital Management, L.P. in connection with Acis's bankruptcy cases and bates labeled CONFIDENTIAL Highland0035395– Highland0035405 per court order</b> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>965</u> Order on motion to seal). (Chiarello, Annmarie)
08/18/2020	<u>967</u> Certificate of service re: <i>Documents Served on August 13, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) ( <i>Joint Motion to Continue Status Conference</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>948</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>951</u> Order granting joint motion to continue hearing on (related document <u>947</u> ) (related documents Objection to claim) Status Conference to be held on

	<p>8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.), <u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u>, filed by Debtor Highland Capital Management, L.P., <u>954</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>955</u> Order granting motion to seal documents (related document <u>948</u>) Entered on 8/13/2020. (Okafor, M.)). (Kass, Albert)</p>
08/19/2020	<p><u>968</u> Hearing held on 8/19/2020. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.) (Edmond, Michael)</p>
08/19/2020	<p><u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. (Hoffman, Juliana)</p>
08/19/2020	<p><u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim). (Annable, Zachery)</p>
08/19/2020	<p><u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. (Pomerantz, Jeffrey)</p>
08/19/2020	<p><u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. (Pomerantz, Jeffrey)</p>
08/19/2020	<p><u>973</u> Support/supplemental document (<i>Notice of Filing of Executed Signature Pages to Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>
08/19/2020	<p><u>974</u> Support/supplemental document (<i>Notice of Filing of Executed Signature Pages to Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>

08/19/2020	<p><u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit B) (Annable, Zachery)</p>
08/19/2020	<p><u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, (Annable, Zachery)</p>
08/20/2020	<p><u>977</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)</p>
08/20/2020	<p><u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)</p>

08/20/2020	<p><u>979</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Wednesday, August 19, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i>; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i>; and 3) <i>Notice of and Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>964</u> <i>Application for compensation (Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)</i> for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices) filed by Other Professional Hayward &amp; Associates PLLC). (Kass, Albert)</p>
08/20/2020	<p><u>980</u> Certificate of service re: <i>Documents Served on August 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>969</u> <i>Application for compensation Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, 970 Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> <i>Objection to claim</i>). filed by Debtor Highland Capital Management, L.P., <u>971</u> <i>Application for compensation Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. filed by Debtor Highland Capital Management, L.P., <u>972</u> <i>Application for compensation Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. filed by Consultant Mercer (US) Inc., <u>975</u> <i>Application for compensation (Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020)</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B), <u>976</u> <i>Notice of hearing (Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> <i>Application for compensation Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> <i>Application for compensation Second Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> <i>Application for compensation Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> <i>Application for compensation (Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020)</i> for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00,</i></i></i></p>

	<p>Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/21/2020	<u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/21/2020	<u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
08/21/2020	<u>983</u> Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.).
08/21/2020	<u>984</u> Motion to appear pro hac vice for Tracy M. O'Steen. Fee Amount \$100 Filed by Interested Party Integrated Financial Associates, Inc. (Bryant, M.)
08/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28037405, amount \$ 100.00 (re: Doc# <u>984</u> ). (U.S. Treasury)
08/23/2020	<u>985</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/23/2020. (Admin.)
08/24/2020	<u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.)
08/24/2020	<u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
08/24/2020	<u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by

	Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland)
08/25/2020	<u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document # <u>984</u> ) Entered on 8/25/2020. (Okafor, M.)
08/25/2020	<u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)
08/25/2020	<u>991</u> Certificate of service re: <i>1) Amended Notice of Status Conference; to be Held on October 6, 2020 at 1:30 p.m. (Central Time); and 2) Order Approving Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>977</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)). (Kass, Albert)
08/25/2020	<u>992</u> Certificate of service re: <i>1) Affidavit of Service of Karina Yee re: Action by Written Consent of Stockholders in Lieu of Special Meeting (Cornerstone Healthcare Group Holding, Inc.); 2) Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; and 3) Agreed Scheduling Order Regarding Objections to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>983</u> Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.)). (Kass, Albert)
08/26/2020	<u>993</u> Request for transcript regarding a hearing held on 8/19/2020. The requested turn-around time is daily. (Edmond, Michael)
08/26/2020	<u>994</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Dugan, S.) Filed by Creditor Paul N. Adkins (related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund

	<p>Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P.). (COURT NOTE: Signature of filer not included. Amended response with signature requested) (Dugan, S.)</p>
08/26/2020	<p><u>995</u> Adversary case 20–03105. Complaint by Highland Capital Management, L.P. against Hunter Mountain Investment Trust. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). 91 (Declaratory judgment). (Annable, Zachery)</p>
08/26/2020	<p><u>996</u> Objection to claim(s) of Creditor(s) Redeemer Committee of the Highland Crusader Fund – Proof of Claim No. 72.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
08/26/2020	<p><u>997</u> Motion to file document under seal. (<i>With the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order Ex A) (Sosland, Martin)</p>
08/26/2020	<p><u>998</u> Transcript regarding Hearing Held 08/19/2020 (20 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) 968 Hearing held on 8/19/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.)). Transcript to be made available to the public on 11/24/2020. (Rehling, Kathy)</p>
08/27/2020	

	<u>999</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/27/2020	<u>1000</u> Certificate of service re: 1) <i>Order Approving Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal</i> ; 2) <i>Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ; and 3) <i>Supplement to the Second Interim Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.), <u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/27/2020	<u>1001</u> Certificate of service re: <i>Order Approving Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)). (Kass, Albert)
08/27/2020	<u>1002</u> Response unopposed to (related document(s): <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
08/27/2020	<u>1003</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document <u>984</u> ) Entered on 8/25/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/27/2020	<u>1004</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/28/2020	<u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document # <u>999</u> ) Entered on 8/28/2020. (Okafor, M.)
08/31/2020	<u>1006</u> Amended Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Rielly, Bill)

08/31/2020	<u>1007</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , (Annable, Zachery)
08/31/2020	<u>1008</u> Adversary case 20-03107. Complaint by Highland Capital Management, L.P. against Patrick Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). (Annable, Zachery)
08/31/2020	<b>1009 SEALED document regarding: Exhibit 20 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<b>1010 SEALED document regarding: Exhibit 21 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<b>1011 SEALED document regarding: Exhibit 22 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<b>1012 SEALED document regarding: Exhibit 23 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<b>1013 SEALED document regarding: Exhibit 24 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
09/01/2020	<u>1014</u> Debtor-in-possession monthly operating report for filing period July 1, 2020 to July 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/01/2020	<u>1015</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
09/01/2020	<u>1016</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>917</u> Application for compensation ( <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> ) for Hayward & Associate). (Annable, Zachery)
09/01/2020	<u>1017</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Assoc). (Annable, Zachery)
09/01/2020	<u>1018</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor,

	Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33.). (Hoffman, Juliana)
09/01/2020	<u>1019</u> Objection to (related document(s): <u>906</u> Objection to claim Filed by Debtor Highland Capital Management, L.P. filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Lopez, Paul). MODIFIED to correct linkage on 9/2/2020 (Ecker, C.).
09/01/2020	<u>1020</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>999</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2020	<u>1021</u> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <u>1015</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)
09/02/2020	<u>1022</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, F). (Pomerantz, Jeffrey)
09/02/2020	<u>1023</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing Filing Under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document <u>999</u> ) Entered on 8/28/2020. (Okafor, M.)). (Kass, Albert)
09/03/2020	<u>1024</u> Certificate of service re: <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; to be Held on October 14, 2020 at 1:30 PM (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1007</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/04/2020	<u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
09/04/2020	<u>1026</u> Objection to (related document(s): <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
09/04/2020	<u>1027</u> Certificate of service re: <i>Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed

	by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1015</a> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">868</a> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/05/2020	<a href="#">1028</a> Witness and Exhibit List for Hearing on September 10, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">831</a> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <a href="#">883</a> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <a href="#">924</a> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <a href="#">949</a> Motion to extend or limit the exclusivity period (RE: related document(s) <a href="#">820</a> Order on motion to extend/shorten time), <a href="#">964</a> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn, <a href="#">971</a> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <a href="#">972</a> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i> , <a href="#">975</a> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). (Hayward, Melissa)
09/08/2020	<a href="#">1029</a> Certificate of service re: <i>Order Approving Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1021</a> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <a href="#">1015</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)). (Kass, Albert)
09/08/2020	<a href="#">1030</a> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">176</a> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
09/09/2020	<a href="#">1031</a> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28083098, amount \$ 100.00 (re: Doc# <a href="#">1031</a> ). (U.S. Treasury)
09/09/2020	<a href="#">1032</a> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">976</a> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim</i>

	<p><i>Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.). (Annable, Zachery)</p>
09/09/2020	<p><u>1033</u> Order granting motion to seal documents (related document # <u>997</u>) Entered on 9/9/2020. (Okafor, M.)</p>
09/09/2020	<p><u>1034</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i>). (Annable, Zachery)</p>
09/09/2020	<p><u>1035</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US)). (Annable, Zachery)</p>
09/09/2020	<p><u>1036</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020</i></p>

	<i>through July 31, 202).</i> (Annable, Zachery)
09/09/2020	<u>1037</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn). (Annable, Zachery)
09/09/2020	<u>1038</u> Certificate of service re: <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/10/2020	<b>1039 SEALED document regarding: Exhibits B and C to the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1033</u> Order on motion to seal). (Attachments: # <u>1</u> Part 2 # <u>2</u> Part 3 # <u>3</u> Part 4 # <u>4</u> Part 5 # <u>5</u> Part 6) (Sosland, Martin)
09/10/2020	<u>1040</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 7/1/2020 to 7/31/2020, Fee: \$531</i> ). (Hoffman, Juliana)
09/10/2020	<u>1041</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation

	<p><i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.) (Annable, Zachery)</i></p>
09/10/2020	<p>1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.,) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.) (Edmond, Michael) (Entered: 09/14/2020)</p>
09/10/2020	<p>1062 Hearing held on 9/10/2020. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.,) (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where</p>

	appropriate and seeking resettings where appropriate.) (Edmond, Michael) (Entered: 09/14/2020)
09/11/2020	<u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.)
09/11/2020	<u>1043</u> Order granting application for compensation (related document # <u>971</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3470794.50, expenses awarded: \$12205.15 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	<u>1044</u> Order granting application for compensation (related document # <u>975</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	<u>1045</u> Order granting application for compensation (related document # <u>924</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$63144.80, expenses awarded: \$833.49 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1046</u> Order granting application for compensation (related document # <u>972</u> ) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1047</u> Order granting application for compensation (related document # <u>964</u> ) granting for Hayward & Associates PLLC, fees awarded: \$60210.00, expenses awarded: \$525.80 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1048</u> Order granting application for compensation (related document # <u>831</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1049</u> Request for transcript regarding a hearing held on 9/11/2020. The requested turn-around time is daily. (Edmond, Michael)
09/11/2020	<u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document # <u>1031</u> ) Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1051</u> Order granting application for compensation (related document # <u>883</u> ) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1052</u> Motion to appear pro hac vice for Erica S. Weisgerber. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1053</u> Motion to appear pro hac vice for Daniel E. Stroik. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1054</u> Motion to appear pro hac vice for M. Natasha Labovitz. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1052</u> ). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1053</u> ). (U.S. Treasury)

09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1054</u> ). (U.S. Treasury)
09/11/2020	<u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. (Hoffman, Juliana)
09/11/2020	<u>1056</u> Certificate of service re: 1) <i>Witness and Exhibit List for Hearing on September 10, 2020</i> ; 2) <i>WebEx Meeting Invitation to participate electronically in the hearing on Thursday, September 10, 2020 at 2:30 p.m. Central Time before the Honorable Stacey G. Jernigan</i> ; and 3) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1028</u> <i>Witness and Exhibit List for Hearing on September 10, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn, <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i> , <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/11/2020	<u>1057</u> Response to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Attachments: # <u>1</u> Appendix Part 1 # <u>2</u> Appendix Part 2 # <u>3</u> Appendix Part 3 # <u>4</u> Appendix Part 4) (Driver, Vickie). Modified linkage on 9/14/2020 (Rielly, Bill).
09/13/2020	<u>1058</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1044</u> Order granting application for compensation (related document <u>975</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1059</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1046</u> Order granting application for compensation (related document <u>972</u> ) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1060</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document <u>1031</u> ) Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/14/2020	

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	<p><u>1063</u> Certificate of service re: 1) <i>Motion for Admission Pro Hac Vice of James E. O'Neill to Represent Highland Capital Management, L.P.</i>; and 2) <i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1031</u> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1032</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A–1 # 2 Exhibit A–2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/16/2020	<p><u>1064</u> Transcript regarding Hearing Held 09/10/2020 (49 pages) RE: Fee Applications; Motion to Extend; Omnibus Objection to Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>1061</u> Hearing held on 9/10/2020., Hearing continued (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital</p>

	<p>Management, L.P.) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.), 1062 Hearing held on 9/10/2020. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.)). Transcript to be made available to the public on 12/15/2020. (Rehling, Kathy)</p>
09/16/2020	<p><u>1065</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
09/16/2020	<p><u>1066</u> Certificate of service re: <i>Documents Served on September 11, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Entered on 9/11/2020 (Dugan, S.), <u>1048</u> Order granting application for compensation (related document <u>831</u>) granting for Official Committee of</p>

	Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.), <u>1051</u> Order granting application for compensation (related document <u>883</u> ) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on 9/11/2020. (Ecker, C.). (Kass, Albert)
09/16/2020	<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Rielly, Bill). (Entered: 10/19/2020)
09/17/2020	1067 Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s).) (Edmond, Michael)
09/17/2020	<u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document # <u>1052</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document # <u>1053</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document # <u>1054</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1071</u> Certificate of service re: <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from July 1, 2020 to and Including July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
09/18/2020	<u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
09/18/2020	<u>1073</u> Order setting Disclosure Statement hearing and deadline to object (RE: related document(s) <u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>945</u> . The deadline for any party wishing to object to the Disclosure Statement shall be October 19, 2020 at 5:00 p.m. Entered on 9/18/2020 (Okafor, M.)
09/19/2020	<u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08,

	Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. (Hoffman, Juliana)
09/19/2020	<u>1075</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document <u>1052</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1076</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document <u>1053</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1077</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document <u>1054</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/21/2020	<u>1078</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.) Responses due by 10/5/2020. (Ecker, C.)
09/21/2020	<u>1079</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan). (Annable, Zachery)
09/21/2020	<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)(Annable, Zachery)
09/21/2020	<u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , (Annable, Zachery)
09/22/2020	<u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E-F) (Annable, Zachery)
09/22/2020	Receipt of filing fee for Schedules(19-34054-sgj11) [misc,schedall] ( 31.00). Receipt number 28122241, amount \$ 31.00 (re: Doc# <u>1082</u> ). (U.S. Treasury)
09/22/2020	<u>1083</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1030</u> Notice (generic)). (Annable, Zachery)
09/22/2020	<u>1084</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1065</u> Notice (generic)). (Annable, Zachery)

09/22/2020	<u>1085</u> Certificate of service re: Orders of the Court filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1043</u> Order on application for compensation, <u>1044</u> Order on application for compensation, <u>1045</u> Order on application for compensation, <u>1046</u> Order on application for compensation, <u>1047</u> Order on application for compensation, <u>1050</u> Order on motion to appear pro hac vice). (Annable, Zachery)
09/22/2020	<u>1086</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1073</u> Order to set hearing, <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement, <u>1081</u> Notice of hearing). (Annable, Zachery)
09/23/2020	<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1088</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement # <u>2</u> Exhibit 2—Release) (Annable, Zachery)
09/23/2020	<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1090</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
09/23/2020	<u>1091</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/24/2020	<u>1092</u> Order further extending the debtor's exclusive period for solicitation of acceptances of a chapter 11 plan <u>949</u> Motion to extend or limit the exclusivity period. Entered on 9/24/2020. (Ecker, C.)
09/24/2020	<u>1093</u> Request for transcript regarding a hearing held on 9/17/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael)
09/24/2020	<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/2020, Fee: \$672,815.00, Expenses: \$3,428.14. Filed by Attorney Jeffrey Nathan Pomerantz Objections

	due by 10/15/2020. (Pomerantz, Jeffrey)
09/24/2020	<u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
09/24/2020	<u>1096</u> Certificate of service re: <i>1) Cover Sheet and Tenth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 Through August 31, 2020; and 2) Summary Cover Sheet and Tenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08, Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
09/24/2020	<u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1098</u> Certificate of service re: <i>Notice of Filing of Debtor's Amended Schedules</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E–F) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List) (Kathman, Jason)
09/24/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 28129975, amount \$ 181.00 (re: Doc# <u>1099</u> ). (U.S. Treasury)

09/25/2020	<p><u>1100</u> Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)</p>
09/25/2020	<p><u>1101</u> Transcript regarding Hearing Held 09/17/2020 (13 pages) RE: Status Conference, Objection to Proof of Claim, Motion to Extend Exclusivity. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1067 Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s)). Transcript to be made available to the public on 12/24/2020. (Rehling, Kathy)</p>
09/25/2020	<p><u>1102</u> Amended Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)</p>
09/25/2020	<p><u>1103</u> Certificate of service re: Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptances of a Chapter 11 Plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1092</u> Order on motion to extend/shorten time). (Annable, Zachery)</p>
09/25/2020	<p><u>1104</u> Certificate of service re: Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Annable, Zachery)</p>
09/25/2020	<p><u>1105</u> Omnibus Response opposed to (related document(s): <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund) (<i>UBS's Omnibus Response to Objections to the UBS Proofs of Claim</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim(s) of</p>

	Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # 2 Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # 3 Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # 7 Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19 # 20 Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # 21 Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # 22 Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Sosland, Martin)
09/25/2020	<u>1106</u> Exhibit List to <i>UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1105</u> Response to objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44) (Sosland, Martin)
09/25/2020	<u>1107</u> Motion to file document under seal.( <i>UBS's Motion for Leave to file Documents Under Seal with UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
09/28/2020	<u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1–A—Forms of Ballots # <u>3</u> Exhibit 1–B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1–C—Notice of Non–Voting Status # <u>5</u> Exhibit 1–D—Notice of Assumption) (Annable, Zachery)
09/28/2020	<u>1109</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1–A—Forms of Ballots # <u>3</u> Exhibit 1–B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1–C—Notice of Non–Voting Status # <u>5</u> Exhibit 1–D—Notice of Assumption)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
09/28/2020	<u>1110</u> Certificate of service re: 1) <i>Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital</i>

	<p><i>Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1088</u> Declaration re: <i>(Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # 1 Exhibit 1—Settlement Agreement # 2 Exhibit 2—Release) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/29/2020	<p><u>1111</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1025</u> Motion to compromise controversy with Carey International, Inc.. <i>(Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith)</i>). (Annable, Zachery)</p>
09/29/2020	<p><u>1112</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave <i>(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Conf, <u>1109</u> Notice of hearing)</i>). (Annable, Zachery)</p>
09/29/2020	<p><u>1113</u> Certificate of service re: <i>Documents Served on or Before September 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1090</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., <u>1091</u> Motion to file document under seal. <i>(Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith)</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

09/30/2020	<u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/30/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28143856, amount \$ 100.00 (re: Doc# <u>1114</u> ). (U.S. Treasury)
09/30/2020	<u>1115</u> Debtor-in-possession monthly operating report for filing period August 1, 2020 to August 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2020	<u>1116</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
10/01/2020	<u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
10/02/2020	<u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
10/02/2020	<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. (Montgomery, Paige)
10/02/2020	<u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
10/05/2020	<u>1121</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
10/05/2020	<u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document # <u>1025</u> ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document # <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1125</u> Order granting motion to seal exhibits (related document # <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A.

	Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)
10/05/2020	<b>1127 SEALED document regarding: Exhibit B—Cornerstone Monetization Schedule per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<b>1128 SEALED document regarding: Exhibit 2 – Partial Final Award dated March 6, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery) Modified docket entry text on 10/5/2020 in include exhibit number. (Ellison, T.).
10/05/2020	<b>1129 SEALED document regarding: Exhibit 3—Disposition of Application of Modification of Award dated March 14, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<b>1130 SEALED document regarding: Exhibit 4—Final Award dated April 29, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/06/2020	<u>1131</u> Order granting motion to seal documents (related document # <u>1107</u> ) Entered on 10/6/2020. (Okafor, M.)
10/06/2020	<u>1132</u> INCORRECT ENTRY – REQUESTER CANCELLED REQUEST. Request for transcript regarding a hearing held on 9/23/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael) Modified on 10/14/2020 (Edmond, Michael).
10/06/2020	<b>1133 SEALED document regarding: UBS's Omnibus Response to Objections to the UBS Proofs of Claim per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1131</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 2 # <u>2</u> Exhibit 3 # <u>3</u> Exhibit 4 # <u>4</u> Exhibit 5 # <u>5</u> Exhibit 6 # <u>6</u> Exhibit 8 # <u>7</u> Exhibit 9 # <u>8</u> Exhibit 10 # <u>9</u> Exhibit 11 # <u>10</u> Exhibit 12 # <u>11</u> Exhibit 14 # <u>12</u> Exhibit 18 # <u>13</u> Exhibit 22 # <u>14</u> Exhibit 23 # <u>15</u> Exhibit 24 # <u>16</u> Exhibit 25 # <u>17</u> Exhibit 26 # <u>18</u> Exhibit 28 # <u>19</u> Exhibit 29 # <u>20</u> Exhibit 32 # <u>21</u> Exhibit 34 # <u>22</u> Exhibit 35 # <u>23</u> Exhibit 36 # <u>24</u> Exhibit 37 # <u>25</u> Exhibit 38 # <u>26</u> Exhibit 39 # <u>27</u> Exhibit 40 # <u>28</u> Exhibit 41 # <u>29</u> Exhibit 42 # <u>30</u> Exhibit 43) (Sosland, Martin)
10/06/2020	<u>1134</u> Motion to appear pro hac vice for Joseph L. Christensen. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	<u>1135</u> Motion to appear pro hac vice for Thomas A. Uebler. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1134</u> ). (U.S. Treasury)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1135</u> ).

	(U.S. Treasury)
10/06/2020	<u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u> , (Hoffman, Juliana)
10/06/2020	<u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)(Edmond, Michael)
10/06/2020	<u>1138</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice for Elissa A. Wagner to Represent Highland Capital Management, L.P.; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1116</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1139</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on October 6, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1140</u> Request for transcript regarding a hearing held on 10/6/2020. The requested turn-around time is daily (Jeng, Hawaii) (Entered: 10/07/2020)
10/07/2020	<u>1141</u> Objection to (related document(s): <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/07/2020	<u>1142</u> Application for compensation ( <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A July 2020 Invoice) (Annable, Zachery)

10/07/2020	<u>1143</u> Certificate of service re: <i>Agreed Motion to Extend the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/07/2020	<u>1144</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/07/2020. (Admin.)
10/08/2020	<u>1145</u> Transcript regarding Hearing Held 10/06/2020 (58 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)). Transcript to be made available to the public on 01/6/2021. (Rehling, Kathy)
10/08/2020	<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document # <u>1134</u> ) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document # <u>1135</u> ) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/08/2020	<u>1149</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1148</u> Objection). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)
10/08/2020	<u>1150</u> Adversary case 20-03128. Complaint by Highland Capital Management, L.P. against Patrick Hagaman Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 71 (Injunctive relief – reinstatement of stay). (Annable, Zachery)
10/08/2020	<u>1151</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77.). (Hoffman, Juliana)
10/08/2020	<u>1152</u> Certificate of service re: <i>Documents Served on October 5, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by

	<p>10/23/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.), <u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document <u>1025</u>) Entered on 10/5/2020. (Okafor, M.), <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u>) Entered on 10/5/2020. (Okafor, M.), <u>1125</u> Order granting motion to seal exhibits (related document <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. ) Entered on 10/5/2020. (Okafor, M.), <u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)). (Kass, Albert)</p>
10/08/2020	<p><u>1153</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Ex. A – Loan Agreement # <u>2</u> Ex.B – Account Summary) (Assink, Bryan)</p>
10/08/2020	<p><u>1164</u> Hearing held on 10/8/2020. (RE: related document(s)<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: P. Montgomery for Official Committee of Unsecured Creditors; J. Kane for CLO Holdco. Nonevidentiary hearing. Announcement of an agreed 60–day extension. Counsel to upload order.) (Edmond, Michael) (Entered: 10/13/2020)</p>
10/09/2020	<p><u>1154</u> Motion for leave to Amend Certain Proofs of Claim Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)</p>
10/09/2020	<p><u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late–Filed Claims; (D) Satisfied Claims; (E) No–Liability Claims; and (F) Insufficient–Documentation Claims (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Schedules 1 – 6) Entered on 10/9/2020 (Okafor, M.)</p>
10/09/2020	<p><u>1156</u> Certificate of service re: <i>Notice of Hearing on PensionDanmarks Motion for Relief from the Automatic Stay and Extending the Objection Deadline</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u>, filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
10/09/2020	<p><u>1157</u> Certificate of service re: <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1142</u> Application for compensation</p>

	<p><i>(Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020)</i> for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A July 2020 Invoice) filed by Other Professional Hayward &amp; Associates PLLC). (Kass, Albert)</p>
10/09/2020	<p><u>1158</u> Certificate of service re: <i>1) Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay; and 2) Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1149</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1148</u> Objection). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/09/2020	<p><u>1159</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing <i>(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing <i>(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/09/2020	<p><u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. (Hoffman, Juliana)</p>
10/10/2020	<p><u>1161</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document <u>1134</u>) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)</p>
10/10/2020	<p><u>1162</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document <u>1135</u>) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)</p>

10/12/2020	<u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u> , Entered on 10/12/2020 (Okafor, M.)
10/13/2020	<u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	<u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trlmagt] ( 25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1165</u> ). (U.S. Treasury)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trlmagt] ( 25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1166</u> ). (U.S. Treasury)
10/13/2020	<u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdco, Ltd (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors. Modified to correct linkage on 11/3/2020 (Ecker, C.).
10/14/2020	<u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 10/14/2020 (Okafor, M.)
10/14/2020	<u>1170</u> Certificate of service re: <i>Agreed Supplemental Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1169</u> Order (generic)). (Annable, Zachery)
10/14/2020	<u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1172</u> Certificate of service re: <i>Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Schedules 1 - 6) Entered on 10/9/2020 (Okafor, M.)). (Kass, Albert)
10/15/2020	<u>1173</u> Notice ( <i>Notice of Filing of (I) Liquidation Analysis and (II) Financial Projections as Exhibits to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit

	B—Organizational Chart)). (Attachments: # <u>1</u> Exhibit C/D to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
10/15/2020	<u>1174</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,). (Hoffman, Juliana)
10/15/2020	<u>1175</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Chiarello, Annmarie)
10/16/2020	<u>1176</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1173</u> Notice (generic)). (Annable, Zachery)
10/16/2020	<u>1177</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/16/2020	<u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
10/16/2020	<u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
10/16/2020	<u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims ( <i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1182</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
10/16/2020	<u>1183</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1215 AND 1216. Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON</i>

	<i>PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1184</u> Support/supplemental document ( <i>Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1185</u> Declaration re: ( <i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. ). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1186</u> Brief in support filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds'). (Platt, Mark). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1187</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
10/16/2020	<u>1188</u> Motion to file document under seal.( <i>UBS's Motion for Leave to File Documents Under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81)</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
10/16/2020	<u>1189</u> INCORRECT ENTRY: Attorney to refile. Support/supplemental document <i>APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND, <u>1186</u> Brief</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip

	<i>page) # 20 Exhibit 20 (slip page) # 21 Exhibit 21 (slip page) # 22 Exhibit 22 (slip page) # 23 Exhibit 23 (slip page) # 24 Exhibit 24 (slip page) # 25 Exhibit 25 (slip page) # 26 Exhibit 26 (slip page) # 27 Exhibit 27 (slip page) # 28 Exhibit 28 (slip page) # 29 Exhibit 29 (slip page)) (Platt, Mark) Modified on 10/19/2020 (Ecker, C.).</i>
10/16/2020	<u>1190</u> Objection to (related document(s): <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Attachments: # <u>1</u> A–C) (Sosland, Martin)
10/16/2020	<u>1191</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Highland CLO Funding, Ltd.. (Maloney, Mark)
10/16/2020	<u>1192</u> Declaration re: <i>W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1190</u> Objection). (Attachments: # <u>1</u> Exhibit 1–6 # <u>2</u> Attachments A–C) (Sosland, Martin)
10/16/2020	<u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u> , (Annable, Zachery)
10/16/2020	<u>1194</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
10/16/2020	<u>1195</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/16/2020	<u>1196</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Driver, Vickie)
10/16/2020	<u>1197</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2

	<p>International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).</p>
<p>10/16/2020</p>	<p><u>1198</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications</p>

	Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	<u>1199</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Sosland, Martin)
10/16/2020	<u>1200</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Pomerantz, Jeffrey)
10/16/2020	<u>1201</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor Patrick Daugherty. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Service List) (Kathman, Jason)
10/16/2020	<u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
10/16/2020	<u>1203</u> Certificate of service re: 1) Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020; 2) Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch; and 3) Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u> , Entered on 10/12/2020 (Okafor, M.), <u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/16/2020	<u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # <u>1</u> Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Rielly, Bill). (Entered: 10/19/2020)
10/16/2020	

	<u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # <u>1</u> Proposed Order) (Rielly, Bill) (Entered: 10/19/2020)
10/17/2020	<u>1204</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit PHD – 1 # <u>2</u> Exhibit PHD – 2) (Kathman, Jason)
10/18/2020	<u>1205</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	<u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
10/18/2020	<u>1208</u> Declaration re: <i>/of Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ). (Driver, Vickie)
10/19/2020	<u>1209</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Party Jefferies LLC. (Doherty, Casey)
10/19/2020	<u>1210</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Pension Benefit Guaranty Corporation. (Attachments: # <u>1</u> Exhibit # <u>2</u> Certificate of Service) (Baird, Michael)
10/19/2020	<u>1211</u> List <i>APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip page) # <u>20</u> Exhibit 20 (slip page) # <u>21</u> Exhibit 21 (slip page) # <u>22</u> Exhibit 22 (slip page) # <u>23</u> Exhibit 23 (slip page) # <u>24</u> Exhibit 24 (slip page) # <u>25</u> Exhibit 25 (slip page) # <u>26</u> Exhibit 26 (slip page) # <u>27</u> Exhibit 27 (slip page) # <u>28</u> Exhibit 28 (slip page) # <u>29</u> Exhibit 29 (slip page)) (Platt, Mark)
10/19/2020	<u>1212</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
10/19/2020	<u>1213</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC. (Drawhorn, Lauren)

10/19/2020	<u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
10/19/2020	<u>1218</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
10/19/2020	<u>1219</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/19/2020	<u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/19/2020	<u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
10/19/2020	<u>1222</u> Notice of hearing filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order), <u>1208</u> Declaration re: <i>of Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ).). Hearing to be held on 11/10/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> and for <u>1208</u> , (Driver, Vickie)
10/19/2020	<u>1223</u> Certificate of service re: Motion of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ). (Driver, Vickie)
10/19/2020	<u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u> , (Annable, Zachery)
10/19/2020	<u>1225</u> Amended Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1204</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6 # <u>7</u> Exhibit PHD-7 # <u>8</u> Exhibit PHD-8 # <u>9</u> Exhibit PHD-9 # <u>10</u> Exhibit PHD-10 # <u>11</u> Exhibit PHD-11 # <u>12</u> Exhibit PHD-12 # <u>13</u> Exhibit PHD-13 # <u>14</u> Exhibit PHD-14 #

	<u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-22) (Kathman, Jason)
10/19/2020	<u>1226</u> Witness and Exhibit List filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Platt, Mark)
10/19/2020	<u>1227</u> Notice of hearing filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund)..., <u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1215</u> and for <u>1216</u> , (Platt, Mark)
10/19/2020	<u>1228</u> Certificate of service re: <i>1) Order Granting Extension of Time to File an Adversary Proceeding Against CLO Holdco, Ltd.; and 2) Notice of Deposition of Professor Nancy B. Rapaport</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdco, Ltd (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry filed by Creditor CLO Holdco, Ltd.). Entered on 10/14/2020 (Okafor, M.), <u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2020	<u>1229</u> Amended Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1199</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> 4 # <u>5</u> Exhibit 5 # <u>6</u> 6) (Sosland, Martin)
10/20/2020	<u>1230</u> Order granting motion to seal documents (related document # <u>1188</u> Motion for leave to file documents under seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<b>1231 SEALED document regarding: Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Sosland, Martin)
10/20/2020	<b>1232 SEALED document regarding: Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 4 # <u>2</u> Exhibit 4 # <u>3</u> Exhibit 6 # <u>4</u> Attachment A # <u>5</u> Attachment B # <u>6</u> Attachment C) (Sosland, Martin)
10/20/2020	<u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E)

	No-Liability Claims; and (F) Insufficient-Documentation Claims ( RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.)
10/20/2020	<u>1234</u> Order granting motion to seal documents (related document # <u>1182</u> Motion to seal regarding the Redeemer Committee of the Crusader Funds Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1235</u> Order granting motion to seal documents (related document # <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<b>1236 SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Platt, Mark)
10/20/2020	<b>1237 SEALED document regarding: APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 16 (sealed) # <u>2</u> Exhibit 17 (sealed) # <u>3</u> Exhibit 18 (sealed) # <u>4</u> Exhibit 19 (sealed) # <u>5</u> Exhibit 20 (sealed) # <u>6</u> Exhibit 21 (sealed) # <u>7</u> Exhibit 22 (sealed) # <u>8</u> Exhibit 23 (sealed) # <u>9</u> Exhibit 24 (sealed) # <u>10</u> Exhibit 25 (sealed) # <u>11</u> Exhibit 26 (sealed) # <u>12</u> Exhibit 27 (sealed) # <u>13</u> Exhibit 28 (sealed) # <u>14</u> Exhibit 29 (sealed)) (Platt, Mark)
10/20/2020	<u>1238</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
10/20/2020	<u>1239</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
10/20/2020	<u>1240</u> Joinder by <i>META-E DISCOVERY, LLC TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE</i> filed by Interested Party Meta-e Discovery, LLC (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Umari, Basil)
10/20/2020	<u>1241</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)

10/20/2020	<u>1242</u> Joinder by REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS JOINDER TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Platt, Mark)
10/20/2020	1243 Hearing held and Continued (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (Continued Hearing to be held on 10/21/2020 at 10:00 AM Dallas Judge Jernigan Ctrm for <u>1087</u> .) (Edmond, Michael)
10/20/2020	<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. (Hoffman, Juliana)
10/20/2020	1256 Hearing held on 10/20/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	1257 Hearing held on 10/20/2020. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	<u>1303</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S EXHIBIT'S #1, #2, #3 & #4; COURT TOOK JUDICIAL NOTICE OF THE DECLARATION OF JOHN A. MORRIS; ADMITTED AS AN EXHIBIT #3; EXHIBITS #2 #3 AND #4 TO DECLARATION AND EXHIBIT #B TO EXHIBIT #1 FILED UNDER SEAL) (Edmond, Michael) (Entered: 10/28/2020)
10/20/2020	1304 DOCKET AN ERROR: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N.

	Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #Q, #R, #S, #T, #U, #V, #W & #X; NOTE* EXHIBIT #P (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	<u>1305</u> MODIFIED TEXT: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (1304 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN & #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE BY PATRICK DAUGHERTY COUNSEL JASON KATHMAN) (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). Modified on 10/30/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	<u>1314</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN ; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN & #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE). (Edmond, Michael) (Entered: 10/30/2020)
10/21/2020	<u>1245</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly. (Edmond, Michael)
10/21/2020	<u>1246</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/21/2020	<u>1247</u> Motion to appear pro hac vice for Faheem A. Mahmooth. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Webb, Donna)
10/21/2020	<u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.).
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 0.00). Receipt number KF: No Fee Due – Exempt U.S. Government Agency, amount \$ 0.00 (re: Doc <u>1247</u> ). (Floyd)
10/21/2020	<b>1249 SEALED document regarding: Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)

10/21/2020	<b>1250 SEALED document regarding: Exhibit 2 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b>1251 SEALED document regarding: Exhibit 11 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b>1252 SEALED document regarding: Exhibit 12 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b>1253 SEALED document regarding: Exhibit 14 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b>1254 SEALED document regarding: Exhibit 15 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b>1255 SEALED document regarding: Exhibit 16 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	1258 Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.) (Edmond, Michael)
10/21/2020	<u>1259</u> Notice of Appearance and Request for Notice by Thomas G. Haskins Jr. filed by Creditor NWCC, LLC. (Haskins, Thomas)
10/21/2020	<u>1260</u> Motion to appear pro hac vice for Jonathan Sundheimer. Fee Amount \$100 Filed by Creditor NWCC, LLC (Haskins, Thomas)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28201179, amount \$ 100.00 (re: Doc# <u>1260</u> ). (U.S. Treasury)
10/21/2020	<u>1261</u> Certificate of service re: Joinder to Objection to Disclosure Statement filed by Interested Party Meta-e Discovery, LLC (RE: related document(s) <u>1240</u> Joinder). (Umari,

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	Basil)
10/21/2020	<u>1262</u> Motion to appear pro hac vice for Joseph T. Moldovan. Fee Amount \$100 Filed by Interested Party Meta-e Discovery, LLC (Umari, Basil)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28201283, amount \$ 100.00 (re: Doc# <u>1262</u> ). (U.S. Treasury)
10/21/2020	<u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/21/2020	<u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.).
10/21/2020	<u>1265</u> Certificate of service re: <i>Documents Served on or Before October 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims ( <i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1184</u> Support/supplemental document ( <i>Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1185</u> Declaration re: ( <i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. ). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1187</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D.

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	<p>Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u>, filed by Debtor Highland Capital Management, L.P., <u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159).). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1266</u> Order granting motion to continue hearing on (related document # <u>1263</u>) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, Entered on 10/22/2020. (Ecker, C.)</p>
10/22/2020	<p><u>1267</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
10/22/2020	<p><u>1268</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, (Annable, Zachery)</p>
10/22/2020	<p><u>1269</u> Certificate of service re: <i>Documents Served on or Before October 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P., <u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1270</u> Certificate of service re: <i>Documents Served on October 20, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F)</p>

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	<p>Insufficient–Documentation Claims ( (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.), <u>1235</u> Order granting motion to seal documents (related document <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)). (Kass, Albert)</p>
10/23/2020	<p><u>1271</u> Transcript regarding Hearing Held 10/20/2020 (256 pages) RE: Motions to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/21/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>1256</u> Hearing held on 10/20/2020. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.), <u>1257</u> Hearing held on 10/20/2020. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.)). Transcript to be made available to the public on 01/21/2021. (Rehling, Kathy)</p>
10/23/2020	<p><u>1272</u> Request for transcript regarding a hearing held on 10/21/2020. The requested turn–around time is hourly. (Edmond, Michael)</p>
10/23/2020	<p><u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document # <u>1089</u>) Entered on 10/23/2020. (Okafor, M.)</p>
10/23/2020	<p><u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, (Annable, Zachery)</p>
10/23/2020	<p><u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital</p>

	Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
10/23/2020	<u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document # <u>1247</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1277</u> Order granting motion to appear pro hac vice adding Jonathan D. Sundheimer for NWCC, LLC (related document <u>1260</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document # <u>1262</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1279</u> Motion to file document under seal.— <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents Filed by Creditor Patrick Daugherty</i> (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Delaware Protective Order) (Kathman, Jason)
10/23/2020	<u>1280</u> Motion for leave to Amend Proof of Claim No. 77 Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Second Amended Proof of Claim) (Kathman, Jason)
10/23/2020	<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Kathman, Jason)
10/23/2020	<u>1282</u> Brief in support filed by Creditor Patrick Daugherty (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ). (Kathman, Jason)
10/23/2020	<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. (Hoffman, Juliana)
10/23/2020	<u>1284</u> Support/supplemental document– <i>Appendix to Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1282</u> Brief). (Attachments: # <u>1</u> Appendix – Part 1 of 3 # <u>2</u> Appendix – Part 2 # <u>3</u> Appendix – Part 3) (Kathman, Jason)
10/24/2020	<u>1285</u> Transcript regarding Hearing Held 10/21/2020 (48 pages) RE: Motion to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/22/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1258 Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST.

	Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.)). Transcript to be made available to the public on 01/22/2021. (Rehling, Kathy)
10/25/2020	<u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/25/2020	<u>1287</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1288</u> Support/supplemental document ( <i>Redline of Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1287</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1290</u> Support/supplemental document ( <i>Redline of the Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1291</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document <u>1247</u> ) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/25/2020	<u>1292</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document <u>1262</u> ) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/26/2020	<u>1293</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit

	B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/26/2020	<u>1294</u> Certificate of service re: <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/26/2020	<u>1295</u> Support/supplemental document ( <i>Notice of Supplemental Disclosures</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/27/2020	<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. (Hoffman, Juliana)
10/27/2020	<u>1297</u> Request for transcript regarding a hearing held on 10/27/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/27/2020	<u>1298</u> Certificate of service re: <i>Documents Served on or Before October 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1266</u> Order granting motion to continue hearing on (related document <u>1263</u> ) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , Entered on 10/22/2020. (Ecker, C.), <u>1268</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/27/2020	1307 Hearing held on 10/27/2020., Hearing continued (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth

	of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/27/2020	<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/28/2020	<u>1299</u> Request for transcript regarding a hearing held on 10/28/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/28/2020	<u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , (Annable, Zachery)
10/28/2020	<u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.)
10/28/2020	<u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document # <u>1087</u> ) Entered on 10/28/2020. (Okafor, M.)
10/28/2020	<u>1306</u> Hearing held on 10/28/2020. (RE: related document(s) <u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.) (Edmond, Michael)

10/28/2020	<p><u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Annable, Zachery)</p>
10/28/2020	<p><u>1310</u> Certificate of service re: 1) <i>Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>; 2) <i>Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay</i>; and 3) <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/28/2020	<p><u>1311</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eleventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through September 30, 2020</i>; and 2) <i>Debtors Omnibus Reply to Objections to Approval of the Debtors Disclosure Statement for the Debtors First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.)</p>

	filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/29/2020	<u>1312</u> Transcript regarding Hearing Held 10/27/2020 (95 pages) RE: Amended Disclosure Statement, Motion for Entry of an Order Approving Adequacy of Disclosure Statement. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/27/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s) <u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20..)). Transcript to be made available to the public on 01/27/2021. (Rehling, Kathy)
10/29/2020	<u>1313</u> Certificate of service re: <i>Summary Cover Sheet and Third Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from June 1, 2020 Through and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
10/30/2020	<u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s) <u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)
10/30/2020	<u>1316</u> Certificate No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0.). (Hoffman, Juliana)
10/30/2020	<u>1317</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing <i>(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital

	<p>Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/31/2020	<p><u>1318</u> Transcript regarding Hearing Held 10/28/2020 (32 pages) RE: Patrick Daugherty's Motion to Confirm Status of Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1306 Hearing held on 10/28/2020. (RE: related document(s)<u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.)). Transcript to be made available to the public on 01/29/2021. (Rehling, Kathy)</p>
11/01/2020	<p><u>1319</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)) No. of Notices: 2. Notice Date 11/01/2020. (Admin.)</p>
11/02/2020	<p><u>1320</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.) Responses due by 11/16/2020. (Ecker, C.)</p>
11/02/2020	<p><u>1321</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.) Responses due by 11/16/2020. (Ecker, C.)</p>
11/02/2020	<p><u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C)</p>

	<p>Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <a href="#">1087</a>) Entered on 10/28/2020. (Okafor, M.), <a href="#">1309</a> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1108</a> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <a href="#">1079</a> Chapter 11 plan, <a href="#">1080</a> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1108</a>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/03/2020	<p><a href="#">1323</a> Certificate of service re: Daugherty's Objection to Approval of Debtor's Disclosure Statement filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1218</a> Objection to disclosure statement). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1324</a> Certificate of service re: Daugherty's Motion for Leave to File Under Seal filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1279</a> Motion to file document under seal. – <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents</i>). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1325</a> Certificate of service re: Daugherty's Motion for Leave to Amend Proof of Claim No. 77 filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1280</a> Motion for leave to <i>Amend Proof of Claim No. 77</i>). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1326</a> Certificate of service re: Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes, Brief and Appendix filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1281</a> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018, 1282</i> Brief, <a href="#">1284</a> Support/supplemental document). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1327</a> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document # <a href="#">1099</a>) Entered on 11/3/2020. (Okafor, M.)</p>
11/03/2020	<p><a href="#">1328</a> Notice of Withdrawal of Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause For Violations of the Acis Plan Injunction filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<a href="#">593</a> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)). (Shaw, Brian)</p>
11/03/2020	<p><a href="#">1329</a> Debtor-in-possession monthly operating report for filing period September 1, 2020 to September 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
11/03/2020	<p><a href="#">1330</a> Certificate No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<a href="#">1142</a> Application for compensation (<i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i>) for Hayward &amp; Associ). (Annable, Zachery)</p>

11/03/2020	<p><u>1331</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to September 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
11/04/2020	<p><u>1332</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1331</u> Notice (generic)). (Annable, Zachery)</p>
11/05/2020	<p><u>1333</u> Stipulation by Highland Capital Management, L.P. and Acis Capital Management, L.P., Acis Capital Management GP, LLC, Joshua N. Terry, Jennifer G. Terry, and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1302</u> Order on motion to compromise controversy). (Annable, Zachery)</p>
11/05/2020	<p><u>1334</u> Certificate of service re: (<i>Amended</i>) <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl &amp; Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1294</u> Certificate of service re: <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl &amp; Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/05/2020	<p><u>1335</u> Certificate of service re: (<i>Amended</i>) <i>1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of</i></p>

	<p><i>Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>)) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1310</u> Certificate of service re: <i>1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>)) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC. (Kass, Albert)</p>
11/05/2020	<p><u>1336</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1327</u> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document <u>1099</u>) Entered on 11/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/05/2020. (Admin.)</p>
11/06/2020	<p><u>1337</u> Response opposed to (related document(s): <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P., <u>1215</u> Motion for summary judgment filed by Interested Party Redeemer Committee of the Highland Crusader Fund) filed by</p>

	Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
11/06/2020	<u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
11/06/2020	<u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # <u>1</u> Exhibit)(Sosland, Martin)
11/06/2020	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28246686, amount \$ 298.00 (re: Doc# <u>1339</u> ). (U.S. Treasury)
11/06/2020	<u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. (Hoffman, Juliana)
11/06/2020	<u>1341</u> Brief in opposition filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment). (Sosland, Martin)
11/06/2020	<u>1342</u> Brief in support filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Sosland, Martin)
11/06/2020	<u>1343</u> Motion to file document under seal.( <i>With UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1344</u> Motion to file document under seal.( <i>With UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1345</u> Exhibit List ( <i>Appendix of Exhibits to UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claims Nos. 190 and 191 and in Support of Rule 56(d) Request</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1337</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9-21 # <u>10</u> Exhibit 22) (Sosland, Martin)
11/06/2020	<u>1346</u> Exhibit List ( <i>Appendix of Exhibits to UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9-29) (Sosland, Martin)
11/09/2020	<u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # <u>1</u> Order)(Assink, Bryan)

11/09/2020	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcap] ( 298.00). Receipt number 28249949, amount \$ 298.00 (re: Doc# <u>1347</u> ). (U.S. Treasury)
11/09/2020	<u>1348</u> Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
11/09/2020	<u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/09/2020	<u>1350</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/10/2020	<u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , (Annable, Zachery)
11/10/2020	<u>1352</u> Order granting motion to continue hearing on (related document # <u>1348</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 12/2/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<u>1353</u> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request (related document # <u>1343</u> ) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<u>1354</u> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <u>1344</u> ) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<b>1355 SEALED document regarding: UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1353</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21) (Sosland, Martin)
11/10/2020	<b>1356 SEALED document regarding: UBS's Brief in Support of Motion for Temporary Allowance of claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1354</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25 # <u>18</u> Exhibit 26 # <u>19</u> Exhibit 27 # <u>20</u> Exhibit 28 # <u>21</u> Exhibit 29) (Sosland, Martin)
11/10/2020	<u>1357</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of</i>

	<i>Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1338</u> , (Sosland, Martin)
11/10/2020	<u>1358</u> Certificate of service re: <i>Eleventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 to and Including September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
11/10/2020	<u>1359</u> Certificate of service re: <i>1) Debtors Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1350</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2020	<u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28256837, amount \$ 100.00 (re: Doc# <u>1360</u> ). (U.S. Treasury)
11/11/2020	<u>1361</u> Certificate of service re: <i>1) Notice of Transfer for MCS Capital LLC c/o STC, Inc. re: Lynn Pinker Cox &amp; Hurst, LLP (Claim No. 148); and 2) Notice of Transfer for Argo Partners re: Stanton Advisors LLC (Scheduled Amount \$10,000.00)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. filed by Creditor Argo Partners). (Kass, Albert)
11/12/2020	<u>1363</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/12/2020	<u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/12/2020	<u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s) <u>821</u> Agreed order regarding deposit of funds into the registry of

	the Court.). Entered on 11/12/2020 (Okafor, M.)
11/12/2020	<u>1366</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # <u>1</u> Exhibit A—DSI Monthly Staffing Report for August 2020) (Annable, Zachery)
11/12/2020	<u>1367</u> Certificate of service re: <i>Notice of Hearing on Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2020	<u>1368</u> Clerk's correspondence requesting to amend the notice of appeal from attorney for appellant. (RE: related document(s) <u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) Responses due by 11/16/2020. (Whitaker, Sheniqua)
11/12/2020	<u>1369</u> Amended notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1339</u> Notice of appeal). (Sosland, Martin)
11/12/2020	<u>1370</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03390-X. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/13/2020	<u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document # <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1372</u> Order granting motion to seal documents (related document # <u>1279</u> ) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1374</u> INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua) Modified on 11/13/2020 (Whitaker, Sheniqua).
11/13/2020	<u>1375</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/13/2020	

	<u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1380</u> WITHDRAWN per # <u>1421</u> . Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas) Modified on 11/19/2020 (Ecker, C.).
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1377</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1378</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1379</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1380</u> ). (U.S. Treasury)
11/13/2020	<u>1381</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03408-G. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ). (Annable, Zachery)
11/13/2020	<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). (Annable, Zachery)
11/13/2020	<u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). (Annable, Zachery)
11/13/2020	<u>1385</u> Support/supplemental document ( <i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Chapter 11 plan). (Annable, Zachery)

11/13/2020	<p><u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1384</u> Disclosure statement). (Annable, Zachery)</p>
11/13/2020	<p><u>1387</u> Certificate of service re: (<i>Supplemental Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/13/2020	<p><u>1388</u> Witness and Exhibit List for <i>Hearing on Motion for Allowance of Claim</i> filed by Creditor Patrick Daugherty (RE: related document(s)<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6 # <u>7</u> Exhibit PHD-7 # <u>8</u> Exhibit PHD-8 # <u>9</u> Exhibit PHD-9 # <u>10</u> Exhibit PHD-10 # <u>11</u> Exhibit PHD-11 # <u>12</u> Exhibit PHD-12 # <u>13</u> Exhibit PHD-13 # <u>14</u> Exhibit PHD-14 # <u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit</p>

	PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-21 # <u>22</u> Exhibit PHD-22 # <u>23</u> Exhibit PHD-23 # <u>24</u> Exhibit PHD-24 # <u>25</u> Exhibit PHD-25 # <u>26</u> Exhibit PHD-26 # <u>27</u> Exhibit PHD-27 # <u>28</u> Exhibit PHD-28 # <u>29</u> Exhibit PHD-29 # <u>30</u> Exhibit PHD-30 # <u>31</u> Exhibit PHD-31 # <u>32</u> Exhibit PHD-32 # <u>33</u> Exhibit PHD-33 # <u>34</u> Exhibit PHD-34 # <u>35</u> Exhibit PHD-35 # <u>36</u> Exhibit PHD-36 # <u>37</u> Exhibit PHD-37 # <u>38</u> Exhibit PHD-38 # <u>39</u> Exhibit PHD-39 # <u>40</u> Exhibit PHD-40 # <u>41</u> Exhibit PHD-41 # <u>42</u> Exhibit PHD-42) (Kathman, Jason)
11/13/2020	<u>1389</u> Notice ( <i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan).). (Attachments: # <u>1</u> Exhibit A—Form of Claimant Trust Agreement # <u>2</u> Exhibit B—Form of New GP LLC Documents # <u>3</u> Exhibit C—Form of Reorganized Limited Partnership Agreement # <u>4</u> Exhibit D—Form of Litigation Sub-Trust Agreement # <u>5</u> Exhibit E—Schedule of Retained Causes of Action # <u>6</u> Exhibit F—Form of New Frontier Note # <u>7</u> Exhibit G—Schedule of Employees # <u>8</u> Exhibit H—Form of Senior Employee Stipulation) (Annable, Zachery)
11/14/2020	<u>1390</u> BNC certificate of mailing. (RE: related document(s) <u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order))) No. of Notices: 1. Notice Date 11/14/2020. (Admin.)
11/15/2020	<u>1391</u> BNC certificate of mailing. (RE: related document(s) <u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit))) No. of Notices: 2. Notice Date 11/15/2020. (Admin.)
11/15/2020	<u>1392</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 11/15/2020. (Admin.)
11/16/2020	<u>1393</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Peri). (Pomerantz, Jeffrey)
11/16/2020	<b>1394 SEALED document regarding: Exhibit 1 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<b>1395 SEALED document regarding: Exhibit 26 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<b>1396 SEALED document regarding: Exhibit 27 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)

11/16/2020	<b>1397 SEALED document regarding: Exhibit 36 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<b>1398 SEALED document regarding: Exhibit 37 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1399</u> Notice ( <i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/16/2020	<u>1400</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
11/16/2020	<u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/16/2020	<u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28270620, amount \$ 25.00 (re: Doc# <u>1401</u> ). (U.S. Treasury)
11/16/2020	<u>1403</u> Exhibit List ( <i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1402</u> Reply). (Annable, Zachery)
11/16/2020	<u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

11/16/2020	<u>1405</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1406</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS OBJECTION AND JOINDER TO DEBTORS OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1407</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10.). (Hoffman, Juliana)
11/16/2020	<u>1408</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B (slip sheet only)) (Platt, Mark)
11/16/2020	<u>1409</u> Objection to (related document(s): <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A (slip sheet only) # <u>2</u> Exhibit B (slip sheet only) # <u>3</u> Exhibit C (slip sheet only) # <u>4</u> Exhibit D (slip sheet only)) (Platt, Mark)
11/16/2020	<u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic)). (Hoffman, Juliana)
11/16/2020	<u>1411</u> Reply to (related document(s): <u>1349</u> Objection filed by Debtor Highland Capital Management, L.P.) – <i>Daugherty's Reply in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/16/2020	<u>1412</u> Declaration re: <i>Michael S. Colvin in Support of Motion for Temporary Allowance of Claims for Voting Purposes</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1411</u> Reply). (Kathman, Jason)
11/17/2020	<u>1413</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 30) (Annable, Zachery)
11/17/2020	

	<p><u>1414</u> Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Platt, Mark)</p>
11/17/2020	<p><u>1415</u> Request for transcript regarding a hearing held on 11/17/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
11/17/2020	<p><u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86). (Hoffman, Juliana)</p>
11/17/2020	<p><u>1417</u> Certificate of service re: 1) <i>Motion for Admission Pro Hac Vice of Hayley R. Winograd to Represent Highland Capital Management, L.P.</i>; 2) <i>Agreed Supplemental Order Regarding Deposit of Funds Into the Registry of the Court</i>; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 Through August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s)<u>821</u> Agreed order regarding deposit of funds into the registry of the court.). Entered on 11/12/2020 (Okafor, M.), <u>1366</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A—DSI Monthly Staffing Report for August 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/17/2020	<p><u>1418</u> Witness and Exhibit List (<i>UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1214</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Attachments: # <u>1</u> Exhibit 26 – 28 # <u>2</u> Exhibit 29 # <u>3</u> Exhibit 30 # <u>4</u> Exhibit AG30 # <u>5</u> Exhibit AG31 # <u>6</u> Exhibit AG32 – AG46) (Sosland, Martin)</p>
11/17/2020	<p><u>1419</u> Court admitted exhibits date of hearing November 17, 2020 (RE: related document(s)<u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty., (COURT ADMITTED THE FOLLOWING EXHIBIT'S; PLAINTIFF'S PATRICK H. DAUGHERTY EXHIBIT'S #1 THROUGH #41 BY THOMAS UEBLER AND DEFENDANT DEBTOR'S EXHIBIT'S #A THROUGH #V &amp; EXHIBIT'S #X1 &amp; #X2 BY JOHN MORRIS) (Edmond, Michael) (Entered: 11/18/2020)</p>
11/17/2020	<p><u>1422</u> Hearing held on 11/17/2020. (RE: related document(s)<u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2020)</p>

11/18/2020	<u>1420</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
11/18/2020	<u>1421</u> Withdrawal [ <i>Notice of Withdrawal of Notice of Transfer of Claim From Debevoise &amp; Plimpton LLP to Contrarian Funds, LLC</i> ] Filed by Creditor Contrarian Funds LLC (related document(s) <u>1380</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Schneller, Douglas)
11/18/2020	<u>1423</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1382</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit X-1 # <u>24</u> Exhibit X-2) (Annable, Zachery)
11/18/2020	<u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
11/18/2020	<u>1425</u> Motion for expedited hearing(related documents <u>1424</u> Motion for leave) ( <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/18/2020	<u>1426</u> Transcript regarding Hearing Held 11/17/2020 (90 pages) RE: Motion for Temporary Allowance of Claim (#1281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/16/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1422</u> Hearing held on 11/17/2020. (RE: related document(s) <u>1281</u> Motion for leave - Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 02/16/2021. (Rehling, Kathy)
11/18/2020	<u>1427</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1420</u> Notice (generic)). (Annable, Zachery)
11/18/2020	<u>1428</u> Certificate of service re: <i>Documents Served on or Before November 14, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.), <u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related

	<p>document(s)<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). filed by Debtor Highland Capital Management, L.P., <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1385</u> Support/supplemental document (<i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1384</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1389</u> Notice (<i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan)). (Attachments: # 1 Exhibit A—Form of Claimant Trust Agreement # 2 Exhibit B—Form of New GP LLC Documents # 3 Exhibit C—Form of Reorganized Limited Partnership Agreement # 4 Exhibit D—Form of Litigation Sub-Trust Agreement # 5 Exhibit E—Schedule of Retained Causes of Action # 6 Exhibit F—Form of New Frontier Note # 7 Exhibit G—Schedule of Employees # 8 Exhibit H—Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/18/2020	<p><u>1429</u> Expedited Motion to file document under seal. (<i>UBS's Expedited Motion for Leave to File Documents Under Seal With UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
11/19/2020	<p><u>1430</u> Order granting motion to seal documents regarding the Redeemer Committee of the Highland Crusader Funds and Crusader Funds Reply Brief in Support of their Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC. (related document # <u>1405</u>) Entered on 11/19/2020. (Okafor, M.)</p>
11/19/2020	<p><u>1431</u> Order granting motion to seal documents regarding the Redeemer Committee of the Crusader Fund and the Crusader Funds Objection and Joinder to Debtors Objection to UBS AG, London Branch and UBS Securities LLCs Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <u>1406</u>) Entered on 11/19/2020. (Okafor, M.)</p>
11/19/2020	<p><b>1432 SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' OBJECTION AND JOINDER TO DEBTOR'S OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018 per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>1431</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Platt, Mark)</p>
11/19/2020	<p><b>1433 SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee</p>

	of the Highland Crusader Fund (RE: related document(s) <u>1430</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit B) (Platt, Mark)
11/19/2020	<u>1434</u> Notice of hearing ( <i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , (Annable, Zachery)
11/19/2020	<u>1435</u> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1166</u> Assignment/Transfer of claim (Claims Agent)). (Annable, Zachery)
11/19/2020	<u>1436</u> Order granting motion for expedited hearing (Related Doc# <u>1425</u> )(document set for hearing: <u>1424</u> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1437</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/19/2020	<u>1438</u> Notice ( <i>Reservation of Rights of UBS Regarding Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption), <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement).). (Sosland, Martin)
11/19/2020	<u>1439</u> WITHDRAWN per docket # <u>1622</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
11/19/2020	<u>1440</u> Order granting motion to seal documents with UBSs Witness and Exhibit List for November 20, 2020 Hearing (related document # <u>1429</u> ) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1441</u> <b>SEALED document regarding: UBS's Witness and Exhibit List for November 20, 2020 Hearing per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1440</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 26 # <u>2</u> Exhibit 27 # <u>3</u> Exhibit 28 # <u>4</u> Exhibit 30 # <u>5</u> Exhibit AG32 # <u>6</u> Exhibit AG33 # <u>7</u> Exhibit AG34 # <u>8</u> Exhibit AG35 # <u>9</u> Exhibit AG36 # <u>10</u> Exhibit AG37 # <u>11</u> Exhibit AG38 # <u>12</u> Exhibit AG39 # <u>13</u> Exhibit AG40 # <u>14</u> Exhibit AG41 # <u>15</u> Exhibit AG42 # <u>16</u> Exhibit AG43 # <u>17</u> Exhibit AG44 # <u>18</u> Exhibit AG45 # <u>19</u> Exhibit AG46) (Sosland, Martin)
11/19/2020	

	<p><u>1442</u> Certificate of service re: <i>Documents Served on November 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1399</u> Notice (<i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1400</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1403</u> Exhibit List (<i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1402</u> Reply). filed by Debtor Highland Capital Management, L.P., <u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/19/2020	<p><u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) (<i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)</p>
11/20/2020	<p><u>1444</u> Notice (<i>Revised Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1437</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)</p>
11/20/2020	<p><u>1445</u> Objection to disclosure statement (RE: related document(s)<u>1384</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)</p>
11/20/2020	<p><u>1446</u> Request for transcript regarding a hearing held on 11/20/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
11/20/2020	<p><u>1447</u> WITHDRAWN per # <u>1460</u> Response opposed to (related document(s): <u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Bonds, John) Modified on 11/23/2020 (Ecker, C.).</p>

11/20/2020	<u>1448</u> Application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1450</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1451</u> Support/supplemental document ( <i>Interim Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1452</u> Support/supplemental document ( <i>Cumulative Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1453</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1454</u> Support/supplemental document ( <i>Interim Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1455</u> Support/supplemental document ( <i>Cumulative Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020. (Sosland, Martin)
11/20/2020	<u>1457</u> Certificate of service re: ( <i>Supplemental</i> ) Documents Served on October 28, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u>

	<p>Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/20/2020	<p>1462 Hearing held on 11/20/2020. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)</p>
11/20/2020	<p>1463 Hearing held on 11/20/2020. (RE: related document(s)<u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)</p>
11/20/2020	<p>1464 Hearing held on 11/20/2020. (RE: related document(s)<u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.) (Edmond, Michael) (Entered: 11/23/2020)</p>

11/23/2020	<u>1458</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020.) Responses due by 11/25/2020. (Blanco, J.)
11/23/2020	<u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) ( <i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1460</u> Withdrawal filed by Interested Party James Dondero (RE: related document(s) <u>1447</u> Response). (Assink, Bryan)
11/23/2020	<u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1465</u> Reply to (related document(s): <u>1461</u> Objection filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
11/23/2020	<u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020. (Assink, Bryan)
11/23/2020	<u>1467</u> Notice of hearing filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , (Assink, Bryan)
11/23/2020	<u>1468</u> Certificate of service re: <i>re: 1) WebEx Meeting Invitation to participate electronically in the hearing on Tuesday, November 20, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Debtors Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1413</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # 1 Exhibit 30) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1469</u> Certificate of service re: <i>1) Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreement</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital

	<p>Management, L.P., <a href="#">1425</a> Motion for expedited hearing(related documents <a href="#">1424</a> Motion for leave) (<i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/23/2020	<p><a href="#">1470</a> Certificate of service re: <i>Documents Served on November 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">1434</a> Notice of hearing (<i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1424</a> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1424</a>, filed by Debtor Highland Capital Management, L.P., <a href="#">1435</a> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1166</a> Assignment/Transfer of claim (Claims Agent)). filed by Debtor Highland Capital Management, L.P., <a href="#">1436</a> Order granting motion for expedited hearing (Related Doc<a href="#">1425</a>)(document set for hearing: <a href="#">1424</a> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1424</a>, Entered on 11/19/2020. (Okafor, M.), <a href="#">1437</a> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/23/2020	<p><a href="#">1478</a> Hearing held on 11/23/2020. (RE: related document(s)<a href="#">1424</a> Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/23/2020	<p><a href="#">1479</a> Hearing held on 11/23/2020. (RE: related document(s)<a href="#">1473</a> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">945</a> Disclosure statement, <a href="#">1080</a> Disclosure statement, <a href="#">1289</a> Disclosure statement, <a href="#">1384</a> Disclosure statement, <a href="#">1453</a> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/23/2020	<p><a href="#">1480</a> Hearing held on 11/23/2020. (RE: related document(s)<a href="#">1108</a> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <a href="#">1079</a> Chapter 11 plan, <a href="#">1080</a> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/24/2020	<p><a href="#">1471</a> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<a href="#">1154</a> Motion for leave <i>to Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed</p>

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	Order)) Responses due by 12/8/2020. (Ecker, C.)
11/24/2020	<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/24/2020	<u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). (Annable, Zachery)
11/24/2020	<u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document # <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	<u>1475</u> Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements (related document # <u>1424</u> ) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	<u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)
11/24/2020	<u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)
11/25/2020	<u>1481</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020.) Responses due by 12/2/2020. (Blanco, J.)
11/25/2020	<u>1482</u> Transcript regarding Hearing Held 11/20/2020 (223 pages) RE: Motions for Partial Summary Judgment; Motion to Allow Claims for Voting Purposes. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1462</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), <u>1463</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), <u>1464</u> Hearing held

	on 11/20/2020. (RE: related document(s) <u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.)). Transcript to be made available to the public on 02/23/2021. (Rehling, Kathy)
11/25/2020	<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B/Proposed Order # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (O'Neil, Holland)
11/25/2020	<u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal). (Sosland, Martin)
11/25/2020	<u>1485</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/26/2020	<u>1486</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/26/2020	<u>1487</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/27/2020	<u>1488</u> Certificate of service re: <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from October 1, 2020 through October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2020	<u>1489</u> Order granting motion to continue hearing on (related document # <u>1485</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/30/2020. (Ecker, C.)
11/30/2020	<u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. (Hoffman, Juliana)
11/30/2020	

	<u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay) (Kathman, Jason)
12/01/2020	<u>1492</u> Clerk's correspondence requesting exhibits from attorney for plaintiff. (RE: related document(s) <u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal).) Responses due by 12/14/2020. (Blanco, J.)
12/01/2020	<u>1493</u> Debtor-in-possession monthly operating report for filing period October 1, 2020 to October 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/01/2020	<u>1494</u> Notice of hearing on <i>Daugherty's Motion to Lift the Automatic Stay</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay)). Preliminary hearing to be held on 12/17/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Creditor Matrix) (Kathman, Jason)
12/01/2020	<u>1495</u> Certificate of service re: <i>1) Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Objection to Request for Emergency Hearing Filed by James Dondero [Docket No. 1443]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) ( <i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/01/2020	<u>1496</u> Certificate of service re: <i>1) Order Granting Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; 2) Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreements; and 3) Order Approving Stipulation Resolving Proof of Claim No. 148 Filed by Lynn Pinker Cox &amp; Hurst, LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.), <u>1475</u> Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements (related document <u>1424</u> ) Entered on 11/24/2020. (Okafor, M.), <u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/01/2020	<u>1497</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1466</u> Appellant designation, Statement of issues on appeal). (Assink, Bryan)
12/02/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 28309234, amount \$ 181.00 (re: Doc# <u>1491</u> ). (U.S. Treasury)
12/02/2020	

	<p><u>1498</u> Notice of hearing filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u>, (O'Neil, Holland)</p>
12/02/2020	<p><u>1499</u> Certificate of service re: 1) <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2020</i>; and 2) <i>Joint Motion to Continue Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>1485</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/03/2020	<p><u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)</p>
12/03/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28312406, amount \$ 26.00 (re: Doc# <u>1500</u>). (U.S. Treasury)</p>
12/03/2020	<p><u>1501</u> Request for transcript regarding a hearing held on 11/23/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
12/03/2020	<p><u>1502</u> Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s)<u>1179</u> Objection to claim). (Assink, Bryan)</p>
12/03/2020	<p><u>1503</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
12/03/2020	<p><u>1504</u> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1503</u> Notice (generic)). (Annable, Zachery)</p>
12/03/2020	

	<p><u>1505</u> Certificate of service re: <i>Debtor's Notice of Affidavit of Publication of the Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm Plan; and (III) Related Important Dates in the New York Times</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)</p>
12/03/2020	<p><u>1506</u> Certificate of service re: <i>1) Order Granting Joint Motion to Continue Hearing; and 2) Twelfth Monthly Application of Sidley Austin for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1489</u> Order granting motion to continue hearing on (related document <u>1485</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, Entered on 11/30/2020. (Ecker, C.), <u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/03/2020	<p><u>1507</u> Transcript regarding Hearing Held 11/23/2020 (42 pages) RE: Disclosure Statement Hearing; Motion to Enter into Sub-Servicer Agreements; Motion for Order Shortening Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1478 Hearing held on 11/23/2020. (RE: related document(s)<u>1424</u> Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.), <u>1479</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.), <u>1480</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.)). Transcript to be made available to the public on 03/3/2021. (Rehling, Kathy)</p>
12/03/2020	

	<u>1883</u> INCORRECT ENTRY – Agreed Notice of voluntary dismissal of appeals filed by Allied World Assurance Company (RE: related document(s) <u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)). (Blanco, J.) Modified on 2/2/2021 (Blanco, J.). (Entered: 02/02/2021)
12/04/2020	<u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	<u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1508</u> ). (U.S. Treasury)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1509</u> ). (U.S. Treasury)
12/04/2020	<u>1510</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 138 and 188 (RE: related document(s) <u>1502</u> Stipulation filed by Interested Party James Dondero). Entered on 12/4/2020 (Ecker, C.)
12/04/2020	<u>1511</u> Certificate of service re: <i>(Supplemental) Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing <i>(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing <i>(Second Amended Notice of Hearing)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave <i>(Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice)</i> (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing <i>(Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP

	<p>LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <a href="#">1087</a>) Entered on 10/28/2020. (Okafor, M.), <a href="#">1309</a> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1108</a> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <a href="#">1079</a> Chapter 11 plan, <a href="#">1080</a> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1108</a>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/07/2020	<p><a href="#">1512</a> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. (Rapoport, Amanda)</p>
12/07/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] ( 26.00). Receipt number 28320856, amount \$ 26.00 (re: Doc# <a href="#">1512</a>). (U.S. Treasury)</p>
12/07/2020	<p><a href="#">1513</a> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. (Hoffman, Juliana)</p>
12/07/2020	<p><a href="#">1514</a> Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount \$350 (Attachments: # <a href="#">1</a> Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief – other). (Annable, Zachery)</p>
12/07/2020	<p><a href="#">1515</a> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)<a href="#">1466</a> Appellant designation, Statement of issues on appeal, <a href="#">1497</a> Appellant designation, Statement of issues on appeal). (Assink, Bryan)</p>
12/07/2020	<p><a href="#">1516</a> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1347</a> Notice of appeal, Modified LINKAGE AND TEXT on 3/12/2021 (Blanco, J.).</p>
12/07/2020	<p><a href="#">1517</a> Appellee designation of contents for inclusion in record of appeal filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<a href="#">1347</a> Notice of appeal). (Chiarello, Annmarie)</p>
12/08/2020	<p><a href="#">1518</a> Order temporarily granting UBS' motion to allow claim number(s) (related document # <a href="#">1338</a>) Entered on 12/8/2020. (Ecker, C.)</p>
12/08/2020	<p><a href="#">1519</a> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<a href="#">1280</a> Motion for leave <i>to Amend Proof of Claim No. 77</i> Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Second Amended Proof of Claim)) Responses due by 12/22/2020. (Ecker, C.)</p>
12/08/2020	<p><a href="#">1520</a> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward &amp;</p>

	Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—August 2020 Invoice) (Annable, Zachery)
12/08/2020	<u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. (Pomerantz, Jeffrey)
12/08/2020	<u>1522</u> INCORRECT EVENT: See # <u>1528</u> for correction. Motion to compel Temporary Restriction of Sales by Non-Debtors CLOs. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Attachments: # <u>1</u> Affidavit # <u>2</u> Proposed Order) (Varshosaz, Artoush) Modified on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1523</u> Motion for expedited hearing(related documents <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund. Modified linkage on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund . (Ecker, C.) (Entered: 12/09/2020)
12/09/2020	<u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/09/2020	<u>1525</u> Request for transcript regarding a hearing held on 1/9/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/09/2020	<u>1526</u> Order granting partial summary judgment (related document # <u>1214</u> ) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	<u>1527</u> Order granting joint motion to continue hearing on (related document # <u>1524</u> ) (related documents Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	<u>1529</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Objection to claim). (Annable, Zachery)
12/09/2020	<u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. (Montgomery, Paige)
12/09/2020	<u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A September 2020 Invoice) (Annable, Zachery)

12/09/2020	<u>1532</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/10/2020	<u>1533</u> Order granting motion to amend proof of claim #77 and to file supporting documents under seal. (related document # <u>1280</u> ) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
12/10/2020	<u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). (Annable, Zachery)
12/10/2020	<u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1539</u> Notice of hearing on <i>Motion Imposing Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Ecker, C.)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , (Varshosaz, Artoush)
12/10/2020	<u>1540</u> Certificate of service re: <i>Twelfth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020; and 2) Appellees Counter-Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1516</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal, <u>1369</u> Amended notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2020	<u>1541</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1518</u> Order temporarily granting UBS' motion to allow claim number(s) (related document <u>1338</u> ) Entered on 12/8/2020. (Ecker, C.)) No. of Notices: 2. Notice Date 12/10/2020. (Admin.)
12/11/2020	

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	<p><u>1542</u> Support/supplemental document/<i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Proposed Order /Exhibit E) (O'Neil, Holland)</p>
12/11/2020	<p><u>1543</u> Transcript regarding Hearing Held 01/09/2020 (91 pages) RE: Motion to Compromise Controversy (#281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 1/9/2020. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.)). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)</p>
12/11/2020	<p><u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP (Hesse, Gregory)</p>
12/11/2020	<p><u>1545</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&amp;A Invoices for July, August, and September 2020) (Annable, Zachery)</p>
12/11/2020	<p><u>1546</u> Objection to (related document(s): <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/11/2020	<p><u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. (Pomerantz, Jeffrey)</p>
12/11/2020	<p><u>1548</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Party James Dondero. (Assink, Bryan)</p>
12/11/2020	<p><u>1549</u> Notice to take deposition of John Dubel filed by Interested Party James Dondero. (Assink, Bryan)</p>
12/11/2020	<p><u>1550</u> Notice to take deposition of Russell Nelms filed by Interested Party James Dondero. (Assink, Bryan)</p>
12/11/2020	

	<p><u>1551</u> Objection to (related document(s): <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
12/11/2020	<p><u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)</p>
12/11/2020	<p><u>1553</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic))., <u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86)., <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), <u>1542</u> Support/supplemental document/<i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), <u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, <u>1545</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Invoices for July, August, and September 2020), <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., <u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM</p>

	Dallas Judge Jernigan Ctrm for <u>1483</u> and for <u>1544</u> and for <u>1545</u> and for <u>1547</u> and for <u>1552</u> and for <u>1410</u> and for <u>1416</u> and for <u>1542</u> , (Annable, Zachery)
12/11/2020	<u>1554</u> Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1555</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1556</u> Certificate of service re: <i>1) Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020; and 2) Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1520</u> Application for compensation ( <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—August 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	<u>1557</u> Certificate of service re: <i>Documents Served on December 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1526</u> Order granting partial summary judgment (related document <u>1214</u> ) Entered on 12/9/2020. (Ecker, C.), <u>1527</u> Order granting joint motion to continue hearing on (related document <u>1524</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Entered on 12/9/2020. (Ecker, C.), <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A September 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>1532</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	<u>1639</u> Hearing set (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020., <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020.)

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	Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1296</u> and for <u>1244</u> , (Ellison, T.) (Entered: 12/29/2020)
12/12/2020	<u>1558</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/13/2020	<u>1559</u> WITHDRAWN per # <u>1622</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Sevilla Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1560</u> WITHDRAWN per # <u>1622</u> Subpoena on Russell Nelms filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Nelms Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1561</u> WITHDRAWN per # <u>1622</u> Subpoena on Fred Caruso filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Caruso Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/14/2020	<u>1562</u> Order granting motion for expedited hearing (Related Doc# <u>1523</u> )(document set for hearing: <u>1528</u> Generic motion) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , Entered on 12/14/2020. (Ecker, C.)
12/14/2020	<u>1563</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Assink, Bryan)
12/14/2020	<u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1566</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
12/14/2020	<u>1567</u> Motion for expedited hearing(related documents <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.)
12/14/2020	<u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/14/2020	<u>1570</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1569</u> Objection). (Attachments: # <u>1</u> Exhibit A #

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	<u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Annable, Zachery)
12/14/2020	<u>1571</u> Objection to (related document(s): <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena file filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
12/14/2020	<u>1572</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181.). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6) (Kathman, Jason)
12/14/2020	<u>1573</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Varshosaz, Artoush)
12/14/2020	<u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Annable, Zachery)
12/15/2020	<u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , (Annable, Zachery)
12/15/2020	<u>1576</u> Order granting motion for expedited hearing (Related Doc# <u>1567</u> )(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , Entered on 12/15/2020. (Okafor, M.)
12/15/2020	<u>1577</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
12/15/2020	<u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland

	Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit A-3 # <u>4</u> Exhibit B-1 # <u>5</u> Exhibit B-2 # <u>6</u> Exhibit B-3 # <u>7</u> Exhibit C (Part 1) # <u>8</u> Exhibit C (Part 2) # <u>9</u> Exhibit C (Part 3) # <u>10</u> Exhibit D (Part 1) # <u>11</u> Exhibit D (Part 2) # <u>12</u> Exhibit D (Part 3) # <u>13</u> Exhibit E # <u>14</u> Exhibit F # <u>15</u> Exhibit G) (Annable, Zachery)
12/15/2020	<u>1579</u> Amended Witness and Exhibit List ( <i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1574</u> List (witness/exhibit/generic)). (Annable, Zachery)
12/15/2020	<u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/15/2020	<u>1581</u> INCORRECT ENTRY: See # <u>1580</u> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1578</u> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). (Entered: 12/16/2020)
12/16/2020	<u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] ( 26.00). Receipt number 28347173, amount \$ 26.00 (re: Doc# <u>1582</u> ). (U.S. Treasury)
12/16/2020	<u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 1/6/2021. (Annable, Zachery)
12/16/2020	<u>1584</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomer). (Pomerantz, Jeffrey)
12/16/2020	<u>1585</u> Court admitted exhibits date of hearing December 16, 2020 (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund. (COURT ADMITTED EXHIBIT'S #A & #B BY JAMES WRIGHT) (Edmond, Michael)
12/16/2020	<u>1586</u> Request for transcript regarding a hearing held on 12/16/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/16/2020	<u>1587</u> Certificate of service re: Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management,

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	L.P. (RE: related document(s) <a href="#">1583</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">816</a> Order on motion to extend/shorten time)). (Annable, Zachery)
12/16/2020	<a href="#">1588</a> Certificate of service re: <i>Documents Served on December 10, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1534</a> Order granting <a href="#">1530</a> Motion to extend time. (Re: related document(s) <a href="#">1530</a> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <a href="#">1168</a> Order (generic))) Entered on 12/10/2020. (Ecker, C.), <a href="#">1535</a> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1207</a> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1207</a> , filed by Debtor Highland Capital Management, L.P., <a href="#">1536</a> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">906</a> Objection to claim). filed by Debtor Highland Capital Management, L.P., <a href="#">1537</a> Order regarding objection to claim number(s) (RE: related document(s) <a href="#">1179</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.), <a href="#">1538</a> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <a href="#">1532</a> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)). (Kass, Albert)
12/16/2020	<a href="#">1589</a> Certificate of service re: <i>Documents Served on or Before December 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1542</a> Support/supplemental document/ <i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <a href="#">1483</a> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <a href="#">1544</a> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <a href="#">1545</a> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020) filed by Other Professional Hayward & Associates PLLC, <a href="#">1546</a> Objection to (related document(s): <a href="#">1439</a> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">1547</a> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. filed by Debtor Highland Capital Management, L.P., <a href="#">1551</a> Objection to (related document(s): <a href="#">1439</a> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">1552</a> Application for compensation ( <i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of</i>

*Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 1553 Omnibus Notice of hearing (*Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., 1407 Certificate (generic)), 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86), 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document/*Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation (*First Interim Application*) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation (*Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation (*Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, filed by Debtor Highland Capital Management, L.P., 1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1558 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/16/2020	1596 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1528</a> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1597 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1564</a> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <a href="#">1559</a> Subpoena filed by Interested Party James Dondero, <a href="#">1560</a> Subpoena filed by Interested Party James Dondero, <a href="#">1561</a> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1598 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1565</a> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1599 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1439</a> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/17/2020	<a href="#">1590</a> Motion to pay (Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C) (Annable, Zachery)
12/17/2020	<a href="#">1591</a> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
12/17/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28350580, amount \$ 26.00 (re: Doc# <a href="#">1591</a> ). (U.S. Treasury)
12/17/2020	<a href="#">1592</a> Certificate of service re: Documents Served on or Before December 16, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1564</a> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <a href="#">1559</a> Subpoena filed by Interested Party James Dondero, <a href="#">1560</a> Subpoena filed by Interested Party James Dondero, <a href="#">1561</a> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <a href="#">1565</a> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <a href="#">1567</a> Motion for expedited hearing(related documents <a href="#">1564</a> Motion to quash, <a href="#">1565</a> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. filed by Debtor

	<p>Highland Capital Management, L.P., <u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s)<u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.), <u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1570</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1569</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/17/2020	<p><u>1593</u> Certificate of service re: <i>Documents Served on December 15, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u>, filed by Debtor Highland Capital Management, L.P., <u>1576</u> Order granting motion for expedited hearing (Related Doc<u>1567</u>)(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u>, Entered on 12/15/2020. (Okafor, M.), <u>1577</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit A-3 # 4 Exhibit B-1 # 5 Exhibit B-2 # 6 Exhibit B-3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>1579</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1574</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P., <u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party</p>

	NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/17/2020	<u>1594</u> Adversary case 20–03195. Complaint by Official Committee of Unsecured Creditors against CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III, James D. Dondero. Fee Amount \$350. Nature(s) of suit: 13 (Recovery of money/property – 548 fraudulent transfer). 91 (Declaratory judgment). 72 (Injunctive relief – other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Montgomery, Paige)
12/17/2020	1600 Hearing held on 12/17/2020. (RE: related document(s) <u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.) (Edmond, Michael) (Entered: 12/18/2020)
12/18/2020	<u>1595</u> Notice of Appearance and Request for Notice <i>with Certificate of Service</i> by Douglas S. Draper filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
12/18/2020	<u>1601</u> Request for transcript regarding a hearing held on 12/17/2020. The requested turn-around time is daily. (Edmond, Michael)
12/18/2020	<u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1590</u> Motion to pay ( <i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u> , (Annable, Zachery)
12/18/2020	<u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s) <u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , Entered on 12/18/2020 (Ecker, C.)
12/18/2020	<u>1604</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (O'Neil, Holland)
12/18/2020	<u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles (related document # <u>1528</u> ) Entered on 12/18/2020. (Okafor, M.)
12/18/2020	<u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation) (Annable, Zachery)
12/18/2020	<u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , (Annable, Zachery)

12/18/2020	<p><u>1608</u> Certificate of service re: <i>(Supplemental) Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/19/2020	<p><u>1609</u> Transcript regarding Hearing Held 12/17/2020 (38 pages) RE: Motion for Relief from Stay (#1491). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1600</u> Hearing held on 12/17/2020. (RE: related document(s)<u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><u>1610</u> Transcript regarding Hearing Held 12/16/2020 (66 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1596</u> Hearing held on 12/16/2020. (RE: related document(s)<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary</p>

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	<p>hearing. Motion denied. Counsel to upload order.), 1597 Hearing held on 12/16/2020. (RE: related document(s)<a href="#">1564</a> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <a href="#">1559</a> Subpoena filed by Interested Party James Dondero, <a href="#">1560</a> Subpoena filed by Interested Party James Dondero, <a href="#">1561</a> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1598 Hearing held on 12/16/2020. (RE: related document(s)<a href="#">1565</a> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1599 Hearing held on 12/16/2020. (RE: related document(s)<a href="#">1439</a> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><a href="#">1611</a> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<a href="#">1340</a> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60.). (Hoffman, Juliana)</p>
12/21/2020	<p><a href="#">1612</a> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document # <a href="#">1491</a>) Entered on 12/21/2020. (Okafor, M.)</p>
12/21/2020	<p><a href="#">1613</a> Certificate of service re: <i>re: 1) Instructions for any counsel and parties who wish to participate in the Hearing; 2) Joinder of the Official Committee of Unsecured Creditors to Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles; and 3) Debtors Motion Pursuant to the Protocols for Authority for Highland and Multi</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">1581</a> INCORRECT ENTRY: See <a href="#">1580</a> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">1578</a> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">1590</a> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/22/2020	<p><a href="#">1614</a> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/22/2020	<p><a href="#">1615</a> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">1490</a> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$). (Hoffman, Juliana)</p>
12/22/2020	<p><a href="#">1616</a> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">1283</a> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official</p>

	Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: &#03). (Hoffman, Juliana)
12/23/2020	<u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s) <u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.)
12/23/2020	<u>1618</u> Notice ( <i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
12/23/2020	<u>1619</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1620</u> Motion to appear pro hac vice for A. Lee Hogewood. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
12/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28366971, amount \$ 100.00 (re: Doc# <u>1620</u> ). (U.S. Treasury)
12/23/2020	<u>1621</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1622</u> Withdrawal ( <i>Notice of Withdrawal of James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business and Related Notices of Subpoena</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> )). (Assink, Bryan)
12/23/2020	<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

12/23/2020	<p><u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, (Annable, Zachery)</p>
12/23/2020	<p><u>1627</u> Certificate of service re: <i>Documents Served on December 18, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u>, filed by Debtor Highland Capital Management, L.P., <u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s)<u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u>, Entered on 12/18/2020 (Ecker, C.), <u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles (related document <u>1528</u>) Entered on 12/18/2020. (Okafor, M.), <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P., <u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/23/2020	<p><u>1628</u> Certificate of service re: <i>Order Denying Patrick Daughertys Motion to Lift the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1612</u> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document <u>1491</u>) Entered on 12/21/2020. (Okafor, M.) filed by Creditor Patrick Daugherty). (Kass, Albert)</p>
12/23/2020	<p><u>1629</u> Certificate of service re: <i>Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1614</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/23/2020	<p><u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)</p>

12/24/2020	<u>1631</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7) (Annable, Zachery)
12/24/2020	<u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1634</u> Support/supplemental document <i>(Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Annable, Zachery)
12/26/2020	<u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/28/2020	<u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)
12/28/2020	<u>1637</u> Certificate of service re: <i>(Supplemental) Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/28/2020	<u>1638</u> Certificate of service re: <i>Documents Served on December 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE:

	<p>related document(s)<u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.), <u>1618</u> Notice (<i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1619</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1621</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/29/2020	<p><u>1640</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23.). (Hoffman, Juliana)</p>
12/30/2020	<p><u>1641</u> Order granting motion to appear pro hac vice adding A. Lee Hogewood, III for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (related document # <u>1620</u>) Entered on 12/30/2020. (Okafor, M.)</p>
12/30/2020	<p><u>1642</u> Certificate of No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>1520</u> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward &amp; Ass). (Annable, Zachery)</p>
12/30/2020	<p><u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)</p>
12/30/2020	<p><u>1644</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)</p>
12/30/2020	<p><u>1645</u> Certificate of service re: Senior Employees Agreed Motion to Withdraw and Substitute Counsel of Record and Notice of Appearance filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)<u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau, <u>1644</u> Notice of appearance and request for notice). (Smith, Frances)</p>
12/30/2020	<p><u>1646</u> Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management,</p>

	<p>L.P., <u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, filed by Debtor Highland Capital Management, L.P., <u>1631</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) filed by Debtor Highland Capital Management, L.P., <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1634</u> Support/supplemental document <i>(Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/30/2020	<p><u>1647</u> Certificate of service re: <i>1) Supplemental Declaration of Matthew Clemente in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors; and 2) Agreed Order Extending Deadline to Assume Unexpired Nonresidential Real Property Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T)</i>. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.). (Kass, Albert)</p>
12/30/2020	<p><u>1648</u> Notice <i>(Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document <i>(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)</p>
12/31/2020	

	<u>1649</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
12/31/2020	<u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (O'Neil, Holland)
12/31/2020	<u>1651</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward). (Annable, Zachery)
12/31/2020	<u>1652</u> Order granting motion to continue hearing on (related document # <u>1649</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 12/31/2020. (Okafor, M.)
12/31/2020	<u>1653</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.), <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/04/2021	<u>1654</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for J). (Pomerantz, Jeffrey)
01/04/2021	<u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. (Hoffman, Juliana)
01/04/2021	<u>1656</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by

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	Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1472</a> Chapter 11 plan). (Attachments: # <a href="#">1</a> Exhibit L—Amended Schedule of Retained Causes of Action # <a href="#">2</a> Exhibit M—Amended Form of Claimant Trust Agreement # <a href="#">3</a> Exhibit N—Redline of Form of Claimant Trust Agreement # <a href="#">4</a> Exhibit O—Amended Form of Litigation Trust Agreement # <a href="#">5</a> Exhibit P—Redline of Form of Litigation Trust Agreement) (Annable, Zachery)
01/05/2021	<a href="#">1657</a> Notice of Appearance and Request for Notice by Daniel P. Winikka filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<a href="#">1658</a> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
01/05/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28389049, amount \$ 26.00 (re: Doc# <a href="#">1658</a> ). (U.S. Treasury)
01/05/2021	<a href="#">1659</a> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <a href="#">1545</a> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Att). (Annable, Zachery)
01/05/2021	<a href="#">1660</a> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2021	<a href="#">1661</a> Objection to confirmation of plan (RE: related document(s) <a href="#">1472</a> Chapter 11 plan) filed by Interested Party James Dondero. (Clarke, James)
01/05/2021	<a href="#">1662</a> Objection to confirmation of plan (RE: related document(s) <a href="#">1472</a> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County. (Spindler, Laurie)
01/05/2021	<a href="#">1663</a> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <a href="#">1544</a> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52.). (Annable, Zachery)
01/05/2021	<a href="#">1664</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1547</a> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30.</i> ). (Annable, Zachery)
01/05/2021	<a href="#">1665</a> Certificate of No Objection filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s) <a href="#">1552</a> Application for compensation ( <i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). (Annable, Zachery)
01/05/2021	<a href="#">1666</a> Objection to confirmation of plan (RE: related document(s) <a href="#">1472</a> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<a href="#">1667</a> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <a href="#">1472</a> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)

01/05/2021	<u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS). (Adams, David)
01/05/2021	<u>1669</u> WITHDRAWN per # <u>1845</u> . Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/05/2021	<u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # <u>1</u> Exhibit A) (Rukavina, Davor)
01/05/2021	<u>1671</u> Trustee's Objection to <i>Fifth Amended Plan</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) (Lambert, Lisa)
01/05/2021	<u>1672</u> Certificate of service re: Senior Employees' Objection to Debtor's Fifth Amended Plan of Reorganization filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1669</u> Objection to confirmation of plan). (Smith, Frances)
01/05/2021	<u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
01/05/2021	<u>1674</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization</i> filed by Paul Kauffman, Todd Travers, Davis Deadman (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1675</u> Joinder by [ <i>Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. No. 1670] and Supplemental Objection to Plan Confirmation</i> ] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Kane, John)
01/05/2021	<u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank. (Drawhorn, Lauren)
01/05/2021	<u>1677</u> Joinder by <i>NexPoint RE Entities to Objection to Confirmation of Fifth Amended Plan of Reorganization</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Drawhorn, Lauren)
01/05/2021	<u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty. (Kathman, Jason)
01/05/2021	

	<u>1679</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization (Amended)</i> filed by Davis Deadman, Paul Kauffman, Todd Travers (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1680</u> Motion to appear pro hac vice for Debra Dandenau. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, and Thomas Surgent (Soderlund, Eric) Modified to correct party filers on 12/7/2021 (Tello, Chris).
01/05/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28390902, amount \$ 100.00 (re: Doc# <u>1680</u> ). (U.S. Treasury)
01/06/2021	<u>1681</u> Motion to appear pro hac vice for Douglas S. Draper. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393061, amount \$ 100.00 (re: Doc# <u>1681</u> ). (U.S. Treasury)
01/06/2021	<u>1682</u> Motion to appear pro hac vice for Leslie A. Collins. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393082, amount \$ 100.00 (re: Doc# <u>1682</u> ). (U.S. Treasury)
01/06/2021	<u>1683</u> Motion to appear pro hac vice for Greta M. Brouphy. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Brouphy, Greta)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393123, amount \$ 100.00 (re: Doc# <u>1683</u> ). (U.S. Treasury)
01/06/2021	<u>1684</u> Order granting third interim fee application for compensation (related document # <u>1296</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1685</u> Order granting third interim application for compensation (related document # <u>1244</u> ) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1686</u> Order granting first interim application for compensation (related document # <u>1544</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1687</u> Order granting third interim application for compensation (related document # <u>1547</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.)
01/06/2021	<u>1689</u> Motion to appear pro hac vice for Warren Horn. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Horn, Warren)

01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393995, amount \$ 100.00 (re: Doc# <u>1689</u> ). (U.S. Treasury)
01/06/2021	<u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for Frank Waterhouse, Scott B. Ellington, Isaac Leventon and Thomas Surgent (related document <u>1680</u> ) Entered on 1/6/2021. (Okafor, M.) Modified to correct parties on 12/7/2021 (Tello, Chris).
01/06/2021	<u>1691</u> Order granting third and final application for compensation (related document <u>1483</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.) Modified to correct text on 1/29/2021 (Ecker, C.).
01/06/2021	<u>1692</u> Adversary case 21-03000. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., CLO Holdco, Ltd.. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 72 (Injunctive relief - other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Annable, Zachery)
01/06/2021	<u>1693</u> Subpoena on Highland Capital Management, L.P. filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 - Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1694</u> Subpoena on Kurtzman Carson Consultants LLC filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 - Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1695</u> Certificate of service re: 1) <i>WebEx Meeting Invitation to participate electronically in the hearing on Wednesday, December 16, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Foley &amp; Lardner LLP's Witness and Exhibit List for Final Fee Application</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
01/06/2021	<u>1696</u> Certificate of service re: 1) <i>Fourth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through and Including November 30, 2020</i> ; and 2) <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1656</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit L—Amended Schedule of Retained Causes of Action # 2 Exhibit M—Amended Form of Claimant Trust Agreement # 3 Exhibit N—Redline of Form of Claimant Trust Agreement # 4 Exhibit O—Amended Form of Litigation Trust Agreement # 5 Exhibit P—Redline of Form of Litigation Trust Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

01/06/2021	<u>1697</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
01/07/2021	<u>1698</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
01/07/2021	<u>1699</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1700</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1701</u> Order granting motion to appear pro hac vice adding Douglas S. Draper for Get Good Trust and The Dugaboy Investment Trust (related document <u>1681</u> ) Entered on 1/7/2021. (Okafor, M.) Modified to add party on 1/7/2021 (Okafor, M.).
01/07/2021	<u>1702</u> Order granting motion to appear pro hac vice adding Leslie A. Collins for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1682</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1703</u> Order granting motion to appear pro hac vice adding Greta M. Brouphy for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1683</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1704</u> Order granting motion to appear pro hac vice adding Warren Horn for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1689</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1705</u> Notice to take deposition of Michael Pugatch filed by Interested Party James Dondero. (Assink, Bryan)
01/08/2021	<u>1706</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/08/2021	<u>1707</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
01/08/2021	<b>1708 SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF,</b>

	<b>including Harbourvest, the Debtor, and CLO Holdco – Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/08/2021	<u>1709</u> Notice ( <i>Notice of Filing of Certificate of Service Regarding Letter Dated January 7, 2021 to Highland Capital Management Services, Inc. from James P. Seery, Jr. Regarding Demand on Promissory Note</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1710</u> Debtor-in-possession monthly operating report for filing period November 1, 2020 to November 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1711</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
01/08/2021	<u>1712</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1660</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	<u>1713</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document <u>1680</u> ) Entered on 1/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 01/08/2021. (Admin.)
01/09/2021	<u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , (Annable, Zachery)
01/11/2021	<u>1715</u> Order granting application for compensation (related document # <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.)
01/11/2021	<u>1716</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Kane, John)
01/11/2021	<b>1717 SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed</b>

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	<b>Protective Order] per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/11/2021	<u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/11/2021	<u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/11/2021	<u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
01/11/2021	<u>1721</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # <u>1</u> Dondero Ex. A – POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H – M) (Assink, Bryan)
01/11/2021	<u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
01/11/2021	<u>1723</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Driver, Vickie)
01/11/2021	<u>1724</u> Certificate of service re: <i>Documents Served on January 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1684</u> Order granting third interim fee application for compensation (related document <u>1296</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.), <u>1685</u> Order granting third interim application for compensation (related document <u>1244</u> ) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.), <u>1686</u> Order granting first interim application for compensation (related document <u>1544</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.), <u>1687</u> Order granting third interim application for compensation (related document <u>1547</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.),

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	<u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.), <u>1691</u> Order granting first and final application for compensation (related document <u>1483</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.). (Kass, Albert)
01/12/2021	<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	<u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit DD) (Annable, Zachery)
01/13/2021	<u>1727</u> Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1711</u> Notice (generic)). (Annable, Zachery)
01/13/2021	<u>1728</u> Order granting application for compensation (related document # <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)
01/13/2021	<u>1729</u> Certificate of service re: Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of the Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1476</u> Order approving disclosure statement). (Annable, Zachery)
01/13/2021	<u>1730</u> Certificate of service re: Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time). (Annable, Zachery)
01/13/2021	<u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/13/2021	<u>1732</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit EE) (Annable, Zachery)
01/13/2021	<u>1733</u> Expedited Motion to file document under seal./ <i>Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Driver, Vickie)

01/13/2021	<u>1734</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) / <i>HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al. (Driver, Vickie)
01/13/2021	<u>1735</u> Support/supplemental document / <i>Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1734</u> Reply). (Driver, Vickie)
01/13/2021	<u>1736</u> Emergency Motion to file document under seal.( <i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/14/2021	<u>1737</u> Order granting motion to seal exhibits (related document # <u>1736</u> ) Entered on 1/14/2021. (Ecker, C.)
01/14/2021	<b>1738 SEALED document regarding: Exhibit A—Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<b>1739 SEALED document regarding: Exhibit B—Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<b>1740 SEALED document regarding: Exhibit C—Offering Memorandum per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1741</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/14/2021	<u>1742</u> Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # <u>1</u> Dondero Ex. N) (Assink, Bryan)
01/14/2021	<u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
01/14/2021	<u>1744</u> Declaration re: ( <i>Supplemental Declaration of Marc D. Katz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). (Annable, Zachery)
01/14/2021	<u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)

01/14/2021	<u>1752</u> INCORRECT Entry: Original entry at # [1745 is correct} Motion to Appoint Examiner pursuant to 11 U.S.C. § 1104(c) by Get Good Trust , The Dugaboy Investment Trust . (Ecker, C.) Modified on 1/15/2021 (Ecker, C.). (Entered: 01/15/2021)
01/14/2021	<u>1753</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1754</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1755</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1782</u> Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON) (Edmond, Michael) (Entered: 01/20/2021)
01/15/2021	<u>1746</u> Order granting motion to pay (related document # <u>1590</u> ) Entered on 1/15/2021. (Ecker, C.)
01/15/2021	<u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)
01/15/2021	<u>1748</u> Motion for expedited hearing(related documents <u>1745</u> Motion to appoint trustee) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)
01/15/2021	<u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.

	(RE: related document(s) <a href="#">1472</a> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/15/2021	<a href="#">1750</a> Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly (Green, Shanette)
01/15/2021	<a href="#">1751</a> Supplemental Certificate of service re: filed by Creditors The Dugaboy Investment Trust, Get Good Trust (RE: related document(s) <a href="#">1745</a> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> , <a href="#">1748</a> Motion for expedited hearing (related documents <a href="#">1745</a> Motion to appoint trustee ). (Draper, Douglas) Modified on 1/15/2021 (Rielly, Bill).
01/15/2021	<a href="#">1756</a> Joinder by filed by Interested Party James Dondero (RE: related document(s) <a href="#">1745</a> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). (Assink, Bryan)
01/15/2021	<a href="#">1757</a> Notice of Increase in Hourly Rates for Pachulski Stang Ziehl & Jones LLP Effective as of January 1, 2021 filed by Debtor Highland Capital Management, L.P.. (Pomerantz, Jeffrey)
01/15/2021	<a href="#">1758</a> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <a href="#">1632</a> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: &#0). (Hoffman, Juliana)
01/15/2021	<a href="#">1759</a> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <a href="#">1633</a> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64.). (Hoffman, Juliana)
01/15/2021	<a href="#">1760</a> Certificate of service re: <i>(Supplemental) Solicitation Materials Served on January 11, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1630</a> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1472</a> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">944</a> Chapter 11 plan, <a href="#">1079</a> Chapter 11 plan, <a href="#">1287</a> Chapter 11 plan, <a href="#">1383</a> Chapter 11 plan, <a href="#">1450</a> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <a href="#">1473</a> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">945</a> Disclosure statement, <a href="#">1080</a> Disclosure statement, <a href="#">1289</a> Disclosure statement, <a href="#">1384</a> Disclosure statement, <a href="#">1453</a> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <a href="#">1476</a> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <a href="#">1472</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <a href="#">1473</a> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/15/2021	<a href="#">1761</a> Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1714</a> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1625</a> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on

	<p>1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing (<i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1762</u> Certificate of service re: <i>Documents Served on January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.), <u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1722</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1763</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1728</u> Order granting application for compensation (related document <u>1545</u>) granting for Hayward &amp; Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/15/2021. (Admin.)</p>
01/16/2021	<p><u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/17/2021	<p><u>1765</u> REFER TO DOCKET ENTRY 3348 FOR AMENDED TRANSCRIPT. Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS</p>

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	<p>AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1753 Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), 1754 Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), 1755 Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 04/19/2021. (Rehling, Kathy) Modified on 5/26/2022 (Tello, Chris).</p>
01/17/2021	<p><u>1766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)) No. of Notices: 1. Notice Date 01/17/2021. (Admin.)</p>
01/18/2021	<p><u>1767</u> Verified statement pursuant to Rule 2019 filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)</p>
01/18/2021	<p><u>1768</u> Certificate of service re: Verified Statement Pursuant to Federal Rule of Bankruptcy Procedure 2019 of (I) Frances A. Smith and Disclosures of Ross &amp; Smith, PC; and (II) Michelle Hartmann and Disclosures of Baker &amp; McKenzie LLP filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1767</u> Verified statement pursuant to Rule 2019). (Smith, Frances)</p>
01/18/2021	<p><u>1769</u> Declaration re: (<i>Report of Mediators</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). (Annable, Zachery)</p>
01/19/2021	<p><u>1770</u> Order Granting Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtors Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith (related document # <u>1733</u>) Entered on 1/19/2021. (Okafor, M.)</p>
01/19/2021	<p><u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. (Pomerantz, Jeffrey)</p>
01/19/2021	<p><u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>

01/19/2021	<u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	<u>1774</u> Notice to take deposition of Highland Capital Management, L.P. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.)
01/19/2021	<u>1775</u> Certificate of service re: <i>1) Order Granting Debtors Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay; 2) Order Approving Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP; and 3) Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1746</u> Order granting motion to pay (related document <u>1590</u> ) Entered on 1/15/2021. (Ecker, C.), <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.), <u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/19/2021	<u>1776</u> Notice to take deposition of Highland Capital Management LP filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/19/2021	<u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B-1 # <u>3</u> Exhibit B-2 # <u>4</u> Exhibit C) (Annable, Zachery)
01/19/2021	<u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/19/2021	<u>1779</u> Certificate of service re: <i>Documents Served on January 13, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1728</u> Order granting application for compensation (related document <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.), <u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1732</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) filed by Debtor Highland Capital Management, L.P., <u>1736</u> Emergency Motion to file document under seal. ( <i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150,</i>

	<i>153, 154), and Authorizing Actions Consistent Therewith)</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1780</u> Notice of District Court Order Accepting Documents Designated for Inclusion in Record on Appeal Under Seal filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
01/20/2021	<u>1781</u> Certificate of service re: Notice of Rule 30(b)(6) Amended Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1776</u> Notice to take deposition). (Draper, Douglas)
01/20/2021	<u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , (Annable, Zachery)
01/20/2021	<u>1784</u> WITHDRAWN PER # <u>1876</u> . Objection to (related document(s): <u>1719</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan) Modified on 2/2/2021 (Ecker, C.).
01/20/2021	<u>1785</u> Order granting motion for expedited hearing (Related Doc# <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021. (Rielly, Bill)
01/20/2021	<u>1786</u> Certificate of service re: <i>Documents Served on January 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1737</u> Order granting motion to seal exhibits (related document <u>1736</u> ) Entered on 1/14/2021. (Ecker, C.), <u>1741</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>1744</u> Declaration re: ( <i>Supplemental Declaration of Marc D. Katz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1787</u> Certificate of service re: <i>Documents Served on or Before January 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1769</u> Declaration re: ( <i>Report of Mediators</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). filed by Debtor Highland Capital Management, L.P., <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. filed by Debtor Highland Capital Management, L.P., <u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C) filed by Debtor Highland Capital Management, L.P., <u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2021	<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # <u>1625</u> ) Entered on 1/21/2021. (Okafor, M.)
01/21/2021	<u>1789</u> Notice ( <i>Notice of Service of Discovery on Highland Capital Management, L.P.</i> ) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Document Requests) (Assink, Bryan)
01/21/2021	<u>1790</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena) (Assink, Bryan)
01/21/2021	<u>1791</u> Notice ( <i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice ( <i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation))., <u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation))., <u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)).). (Annable, Zachery)
01/22/2021	<u>1792</u> Witness and Exhibit List <i>United States' (IRS) Witness &amp; Exhibit List</i> filed by Creditor United States (IRS) (RE: related document(s) <u>1668</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Adams, David)
01/22/2021	<u>1793</u> Witness and Exhibit List <i>for Confirmation Hearing</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint

	Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Hogewood, A.)
01/22/2021	<u>1794</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit 5 # <u>2</u> Exhibit 6 # <u>3</u> Exhibit 6-1) (Draper, Douglas)
01/22/2021	<u>1795</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17) (Assink, Bryan)
01/22/2021	<u>1796</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE1 # <u>2</u> Exhibit SE2 # <u>3</u> Exhibit SE # <u>4</u> Exhibit SE4 # <u>5</u> Exhibit SE5 # <u>6</u> Exhibit SE6 # <u>7</u> Exhibit SE7 # <u>8</u> Exhibit SE8 # <u>9</u> Exhibit SE9 # <u>10</u> Exhibit SE10 # <u>11</u> Exhibit SE11 # <u>12</u> Exhibit SE12 # <u>13</u> Exhibit SE13 # <u>14</u> Exhibit SE14 # <u>15</u> Exhibit SE15 # <u>16</u> Exhibit SE16 # <u>17</u> Exhibit SE17 # <u>18</u> Exhibit SE18 # <u>19</u> Exhibit SE19 # <u>20</u> Exhibit SE20 # <u>21</u> Exhibit SE21 # <u>22</u> Exhibit SE22 # <u>23</u> Exhibit SE23 # <u>24</u> Exhibit SE24 # <u>25</u> Exhibit SE25 # <u>26</u> Exhibit SE26 # <u>27</u> Exhibit SE27 # <u>28</u> Exhibit SE28 # <u>29</u> Exhibit SE29 # <u>30</u> Exhibit SE30 # <u>31</u> Exhibit SE31 # <u>32</u> Exhibit SE33 # <u>33</u> Exhibit SE34 # <u>34</u> Exhibit SE35 # <u>35</u> Exhibit SE36 # <u>36</u> Exhibit SE37 # <u>37</u> Exhibit SE38 # <u>38</u> Exhibit SE39 # <u>39</u> Exhibit SE40) (Smith, Frances)
01/22/2021	<u>1797</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Kane, John)
01/22/2021	<u>1798</u> Certificate of service re: Witness & Exhibit List for Hearing Scheduled for January, 26, 2021 at 9:30 a.m. filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1796</u> List (witness/exhibit/generic)). (Smith, Frances)
01/22/2021	<u>1799</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE33) (Smith, Frances)
01/22/2021	<u>1800</u> Exhibit and Witness List for Confirmation Hearing filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit U # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit

	OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit ZZZ) (Hogewood, A.) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1801</u> Adversary case 21-03003. Complaint by Highland Capital Management, L.P. against James Dondero. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property - 542 turnover of property). 13-Recovery of money/property - §548 fraudulent transfer; 14-Recovery of money/property - other; 91-Declaratory judgment (Annable, Zachery) Modified text to update Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	<u>1802</u> Adversary case 21-03004. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property - 542 turnover of property). (Annable, Zachery)
01/22/2021	<u>1803</u> Adversary case 21-03005. Complaint by Highland Capital Management, L.P. against NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property - 542 turnover of property). 03 13-Recovery of money/property - §548 fraudulent transfer. 04 14-Recovery of money/property - other. 05 91-Declaratory judgment. (Annable, Zachery) MODIFIED to add natures of suit on 8/30/2021 (Ecker, C.).
01/22/2021	<u>1804</u> Adversary case 21-03006. Complaint by Highland Capital Management, L.P. against Highland Capital Management Services, Inc.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property - 542 turnover of property). 03 13-Recovery of money/property - §548 fraudulent transfer . 04 14-Recovery of money/property - other. 05 91-Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	<u>1805</u> Adversary case 21-03007. Complaint by Highland Capital Management, L.P. against HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property - 542 turnover of property). 0313-Recovery of money/property - §548 fraudulent transfer. 04 14-Recovery of money/property - other . 0591-Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	<u>1806</u> Motion to file document under seal. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund (Attachments: # <u>1</u> Proposed Order) (Vasek, Julian)
01/22/2021	<u>1807</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u>

	<p>Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # <u>1</u> Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Annable, Zachery)</p>
01/22/2021	<p><u>1809</u> Support/supplemental document (<i>Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Annable, Zachery)</p>
01/22/2021	<p><u>1810</u> Witness and Exhibit List [Exhibits 1–2 and 12–17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>1797</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> CLO Exhibit 2 # <u>2</u> CLO Exhibit 12 # <u>3</u> CLO Exhibit 13 # <u>4</u> CLO Exhibit 14 # <u>5</u> CLO Exhibit 15 # <u>6</u> CLO Exhibit 16 # <u>7</u> CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit Q # <u>2</u> Exhibit R # <u>3</u> Exhibit S # <u>4</u> Exhibit T # <u>5</u> Exhibit U # <u>6</u> Exhibit V # <u>7</u> Exhibit W # <u>8</u> Exhibit X # <u>9</u> Exhibit Y # <u>10</u> Exhibit Z # <u>11</u> Exhibit AA # <u>12</u> Exhibit BB # <u>13</u> Exhibit CC # <u>14</u> Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><b>1812 SEALED document regarding: CLO Exhibit 3 – Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>
01/22/2021	<p><b>1813 SEALED document regarding: CLO Exhibit 4 – Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>
01/22/2021	<p><u>1814</u> Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).</p>

01/22/2021	1815 SEALED document regarding: CLO Exhibit 5 – Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	1816 SEALED document regarding: CLO Exhibit 6 – Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	1817 SEALED document regarding: CLO Exhibit 7 – Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	1818 SEALED document regarding: CLO Exhibit 8 – Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	1819 SEALED document regarding: CLO Exhibit 9 – Valhalla CLO, Ltd. Reference Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	1820 SEALED document regarding: CLO Exhibit 10 – Westchester CLO, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	1821 SEALED document regarding: CLO Exhibit 11 – Debtor Prepared Summary of CLO Holdco, Ltd.'s Interest in Debtor-Managed CLO Funds [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> List of 20 Largest Creditors C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> List of 20 Largest Creditors W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit XXX # <u>77</u> Exhibit YYY # <u>78</u> Exhibit ZZZ # <u>79</u> Exhibit AAAA # <u>80</u> Exhibit BBBB # <u>81</u> Exhibit CCCC # <u>82</u> Exhibit DDDD # <u>83</u> Exhibit EEEE # <u>84</u> Exhibit FFFF # <u>85</u> Exhibit GGGG # <u>86</u> Exhibit MMMM # <u>87</u> Exhibit NNNN # <u>88</u> Exhibit OOOO # <u>89</u> Exhibit PPPP # <u>90</u> Exhibit QQQQ # <u>91</u> Exhibit RRRR # <u>92</u> Exhibit SSSS # <u>93</u> Exhibit TTTT # <u>94</u> Exhibit UUUU # <u>95</u> Exhibit VVVV # <u>96</u> Exhibit

	<p>WWW # <a href="#">97</a> Exhibit XXXX # <a href="#">98</a> Exhibit YYYY # <a href="#">99</a> Exhibit ZZZZ # <a href="#">100</a> Exhibit AAAAA # <a href="#">101</a> Exhibit BBBB # <a href="#">102</a> Exhibit CCCC # <a href="#">103</a> Exhibit DDDD # <a href="#">104</a> Exhibit EEEE # <a href="#">105</a> Exhibit FFFF # <a href="#">106</a> Exhibit GGGG # <a href="#">107</a> Exhibit HHHH # <a href="#">108</a> Exhibit IIII # <a href="#">109</a> Exhibit JJJJ # <a href="#">110</a> Exhibit KKKK # <a href="#">111</a> Exhibit LLLL # <a href="#">112</a> Exhibit MMMM # <a href="#">113</a> Exhibit NNNN # <a href="#">114</a> Exhibit OOOO # <a href="#">115</a> Exhibit PPPP # <a href="#">116</a> Exhibit QQQQ # <a href="#">117</a> Exhibit RRRR # <a href="#">118</a> Exhibit SSSS # <a href="#">119</a> Exhibit TTTT # <a href="#">120</a> Exhibit UUUU # <a href="#">121</a> Exhibit VVVV # <a href="#">122</a> Exhibit WWWW # <a href="#">123</a> Exhibit XXXX # <a href="#">124</a> Exhibit YYYYY # <a href="#">125</a> Exhibit ZZZZ # <a href="#">126</a> Exhibit AAAAAA # <a href="#">127</a> Exhibit BBBB # <a href="#">128</a> Exhibit CCCC # <a href="#">129</a> Exhibit DDDD # <a href="#">130</a> Exhibit EEEEE # <a href="#">131</a> Exhibit FFFF # <a href="#">132</a> Exhibit GGGG # <a href="#">133</a> Exhibit HHHH # <a href="#">134</a> Exhibit IIII # <a href="#">135</a> Exhibit JJJJ # <a href="#">136</a> Exhibit KKKK # <a href="#">137</a> Exhibit LLLL # <a href="#">138</a> Exhibit MMMM # <a href="#">139</a> Exhibit NNNN # <a href="#">140</a> Exhibit OOOO # <a href="#">141</a> Exhibit PPPP # <a href="#">142</a> Exhibit QQQQ # <a href="#">143</a> Exhibit RRRR # <a href="#">144</a> Exhibit SSSS # <a href="#">145</a> Exhibit TTTT # <a href="#">146</a> Exhibit UUUU # <a href="#">147</a> Exhibit VVVV # <a href="#">148</a> Exhibit WWWW # <a href="#">149</a> Exhibit XXXX # <a href="#">150</a> Exhibit YYYYY # <a href="#">151</a> Exhibit ZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). Additional attachment(s) added on 1/28/2021 (Okafor, M.).</p>
01/22/2021	<p><a href="#">1823</a> Response unopposed to (related document(s): <a href="#">1828</a> Response filed by Debtor Highland Capital Management, L.P.. Modified linkage on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><a href="#">1828</a> Response opposed to (related document(s): <a href="#">1661</a> Objection to confirmation of plan filed by Interested Party James Dondero, <a href="#">1662</a> Objection to confirmation of plan filed by Creditor City of Richardson, Creditor Allen ISD, Creditor Kaufman County, Creditor Dallas County, Creditor City of Allen, <a href="#">1666</a> Objection to confirmation of plan filed by Interested Party Jack Yang, Interested Party Brad Borud, <a href="#">1667</a> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <a href="#">1668</a> Objection to confirmation of plan filed by Creditor United States (IRS), <a href="#">1669</a> Objection to confirmation of plan filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, <a href="#">1670</a> Objection to confirmation of plan filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <a href="#">1671</a> Objection, <a href="#">1673</a> Objection to confirmation of plan filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, <a href="#">1676</a> Objection to confirmation of plan filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc., <a href="#">1678</a> Objection to confirmation of plan filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C) (Annable, Zachery) Modified date on 1/25/2021 (Ecker, C.). (Entered: 01/25/2021)</p>
01/23/2021	<p><a href="#">1824</a> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/23/2021	<p><a href="#">1825</a> BNC certificate of mailing – PDF document. (RE: related document(s)<a href="#">1785</a> Order granting motion for expedited hearing (Related Doc<a href="#">1778</a>)(document set for hearing: <a href="#">1777</a> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <a href="#">1777</a>, Entered on 1/20/2021.) No. of Notices: 1. Notice Date 01/23/2021. (Admin.)</p>
01/24/2021	<p><a href="#">1826</a> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <a href="#">1</a> Service List)</p>

	(Vasek, Julian)
01/25/2021	<u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/25/2021	<u>1829</u> Notice ( <i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward &amp; Associates PLLC) Effective as of January 1, 2021</i> ) filed by Other Professional Hayward & Associates PLLC. (Annable, Zachery)
01/25/2021	<u>1830</u> Order granting motion to continue hearing on (related document # <u>1827</u> ) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1831</u> Order granting motion to file exhibits under seal (related document # <u>1806</u> ) Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1832</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order)). Hearing to be held on 3/2/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1745</u> , (Draper, Douglas)
01/25/2021	<u>1833</u> Notice ( <i>Notice of Certificate of Service re: Letter Dated January 19, 2021 to PCMG Trading Partners XXIII, L.P. from James P. Seery, Jr. re Highland Select Equity Fund, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/25/2021	<u>1834</u> Certificate of service re: Notice Of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1832</u> Notice of hearing). (Draper, Douglas)
01/25/2021	<u>1835</u> INCORRECT ENTRY: Attorney to refile. Motion to redact/restrict Emergency Redact (related document(s): <u>1822</u> ) (Fee Amount \$26) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) MODIFIED on 1/26/2021 (Ecker, C.).
01/25/2021	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] ( 26.00). Receipt number 28441834, amount \$ 26.00 (re: Doc# <u>1835</u> ). (U.S. Treasury)
01/25/2021	<u>1836</u> Motion to file document under seal. <i>Emergency Motion to File Competing Plan and Disclosure Statement Under Seal</i> Filed by Interested Party NexPoint Advisors, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)
01/25/2021	<u>1837</u> Certificate of service re: <i>1) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Relief; and 2) Order Granting Debtors Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , filed by Debtor Highland Capital Management, L.P., <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at

	09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.). (Kass, Albert)
01/26/2021	<u>1838</u> Notice ( <i>Notice of Settlement</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Settlement Agreement) (Annable, Zachery)
01/26/2021	<u>1839</u> WITHDRAWN at # <u>1858</u> . Notice to take deposition of Frank Waterhouse filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.) Modified on 1/29/2021 (Ecker, C.).
01/26/2021	<u>1840</u> INCORRECT ENTRY: Attorney to refile. Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan) Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/26/2021	<u>1841</u> Certificate of service re: Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1840</u> Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan)). (Smith, Frances)
01/26/2021	<u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. (Hoffman, Juliana)
01/26/2021	<u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
01/26/2021	<u>1844</u> Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u> ) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice ( <i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice ( <i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).

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	<p>(Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/26/2021	<p><u>1850</u> Hearing held on 1/26/2021. (RE: related document(s)<u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/27/2021)</p>
01/27/2021	<p><u>1845</u> Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)<u>1669</u> Objection to confirmation of plan). (Smith, Frances)</p>
01/27/2021	<p><u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/27/2021	<p><u>1847</u> Notice (<i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)</p>
01/27/2021	<p><u>1848</u> Amended Motion to redact/restrict (related document(s):<u>1835</u>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order # <u>2</u> Exhibit PPPP # <u>3</u> Exhibit QQQQ # <u>4</u> Exhibit RRRR # <u>5</u> Exhibit SSSS # <u>6</u> Exhibit TTTT # <u>7</u> Exhibit UUUU # <u>8</u> Exhibit VVVV # <u>9</u> Exhibit WWWW # <u>10</u> Exhibit XXXX # <u>11</u> Exhibit YYYY # <u>12</u> Exhibit ZZZZ # <u>13</u> Exhibit DDDDDD) (Annable, Zachery)</p>
01/27/2021	<p><u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document # <u>1777</u>) Entered on 1/27/2021. (Okafor, M.)</p>
01/27/2021	<p><u>1851</u> Order granting motion to seal documents (related document # <u>1836</u>) Entered on 1/27/2021. (Okafor, M.)</p>
01/27/2021	<p><u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc # <u>1848</u>) Entered on 1/27/2021. (Okafor, M.)</p>
01/27/2021	

	<p><u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. (Hoffman, Juliana)</p>
01/27/2021	<p><u>1854</u> Certificate of service re: <i>Documents Served on January 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1807</u> INCORRECT EVENT: Attorney to refile. Notice (<i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1661</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1809</u> Support/supplemental document (<i>Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1814</u> Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit</p>

	<p>DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBB # 102 Exhibit CCCC # 103 Exhibit DDDD # 104 Exhibit EEEEE # 105 Exhibit FFFF # 106 Exhibit GGGG # 107 Exhibit HHHHH # 108 Exhibit IIII # 109 Exhibit JJJJ # 110 Exhibit KKKKK # 111 Exhibit LLLLL # 112 Exhibit MMMMM # 113 Exhibit NNNNN # 114 Exhibit OOOOO # 115 Exhibit PPPPP # 116 Exhibit QQQQQ # 117 Exhibit RRRRR # 118 Exhibit SSSSS # 119 Exhibit TTTTT # 120 Exhibit UUUUU # 121 Exhibit VVVVV # 122 Exhibit WWWW # 123 Exhibit XXXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBBBB # 128 Exhibit CCCCCC # 129 Exhibit DDDDDD # 130 Exhibit EEEEEE # 131 Exhibit FFFFFFF # 132 Exhibit GGGGGG # 133 Exhibit HHHHHH # 134 Exhibit IIIIII # 135 Exhibit JJJJJJ # 136 Exhibit KKKKKK # 137 Exhibit LLLLLL # 138 Exhibit MMMMMM # 139 Exhibit NNNNNN # 140 Exhibit OOOOOO # 141 Exhibit PPPPPP # 142 Exhibit QQQQQQ # 143 Exhibit RRRRRR # 144 Exhibit SSSSSS # 145 Exhibit TTTTTT # 146 Exhibit UUUUUU # 147 Exhibit VVVVVV # 148 Exhibit WWWW # 149 Exhibit XXXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/28/2021	<u>1855</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Prostok, Jeff)
01/28/2021	<u>1856</u> Notice of Appearance and Request for Notice by Suzanne K. Rosen filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Rosen, Suzanne)
01/28/2021	<u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u> , (Annable, Zachery)
01/28/2021	<u>1858</u> <i>Withdrawal of Notice of Deposition</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1839</u> Notice to take deposition). (Hogewood, A.)
01/28/2021	<u>1859</u> <b>SEALED document regarding: PLAN OF REORGANIZATION OF JAMES DONDERO, NEXPOINT ADVISORS, L.P. per court order</b> filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1851</u> Order on motion to seal). (Rukavina, Davor)
01/28/2021	

	<p><b>1860 SEALED document regarding: DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION per court order</b> filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1851</u> Order on motion to seal). (Rukavina, Davor)</p>
01/28/2021	<p><u>1861</u> Certificate of service re: <i>Documents Served on or Before January 25, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1829</u> Notice (<i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward &amp; Associates PLLC) Effective as of January 1, 2021</i>) filed by Other Professional Hayward &amp; Associates PLLC. filed by Other Professional Hayward &amp; Associates PLLC, <u>1830</u> Order granting motion to continue hearing on (related document <u>1827</u>) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.). (Kass, Albert)</p>
01/29/2021	<p><u>1862</u> Transcript regarding Hearing Held 01/26/2021 (257 pages) RE: KERP Motion <u>1777</u>. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1850 Hearing held on 1/26/2021. (RE: related document(s)<u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 04/29/2021. (Rehling, Kathy)</p>
01/29/2021	<p><u>1863</u> Amended Witness and Exhibit List of <i>Funds and Advisors</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1793</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73 # <u>74</u> Exhibit 74 # <u>75</u> Exhibit 75 # <u>76</u> Exhibit 76 # <u>77</u> Exhibit 77 # <u>78</u> Exhibit 78 # <u>79</u> Exhibit 79 # <u>80</u> Exhibit 80 # <u>81</u> Exhibit 81 # <u>82</u> Exhibit 82) (Hogewood, A.)</p>
01/29/2021	<p><u>1864</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i>) filed by Other</p>

	Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
01/29/2021	<u>1865</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i> ) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
01/29/2021	<u>1866</u> Amended Witness and Exhibit List ( <i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1822</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit AAAAAAA # <u>3</u> Exhibit BBBB BBB # <u>4</u> Exhibit CCCCCC # <u>5</u> Exhibit DDDDDDD # <u>6</u> Exhibit EEEEEEE) (Annable, Zachery)
01/29/2021	<u>1867</u> Certificate of service re: <i>1) Notice of Settlement; 2) Fourteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through December 31, 2020; and 3) Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1838</u> Notice ( <i>Notice of Settlement</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36.</i> Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/01/2021	Adversary case 3:20-ap-3128 closed (Ecker, C.)
02/01/2021	<u>1868</u> Supplemental Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1808</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
02/01/2021	<u>1869</u> Certificate of service re: Monthly Staffing Reports by Development Specialists, Inc. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1864</u> Notice (generic), <u>1865</u> Notice (generic)). (Annable, Zachery)
02/01/2021	<u>1870</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).
02/01/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28458158, amount \$ 298.00 (re: Doc# <u>1870</u> ). (U.S. Treasury)
02/01/2021	<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) ( <i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	<u>1872</u> <b>SEALED document regarding: Exhibit 76 per court order</b> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund,

	Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1831</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 77 # <u>2</u> Exhibit 78 # <u>3</u> Exhibit 79 # <u>4</u> Exhibit 80 # <u>5</u> Exhibit 81 # <u>6</u> Exhibit 82) (Vasek, Julian)
02/01/2021	<u>1873</u> Notice ( <i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
02/01/2021	<u>1874</u> Amended Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1795</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17 # <u>18</u> Dondero Ex. 18 # <u>19</u> Dondero Ex. 19 # <u>20</u> Dondero Ex. 20) (Assink, Bryan)
02/01/2021	<u>1875</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit DD # <u>4</u> Exhibit EE # <u>5</u> Exhibit FF) (Annable, Zachery)
02/01/2021	<u>1876</u> Withdrawal ( <i>Notice of Withdrawal of Document</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1784</u> Objection). (Assink, Bryan)
02/01/2021	<u>1877</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit DDDDDD # <u>3</u> Exhibit FFFFFFFF # <u>4</u> Exhibit GGGGGGGG # <u>5</u> Exhibit HHHHHHHH # <u>6</u> Exhibit IIIIII # <u>7</u> Exhibit JJJJJJ # <u>8</u> Exhibit KKKKKKKK # <u>9</u> Exhibit LLLLLL # <u>10</u> Exhibit MMMMMM # <u>11</u> Exhibit NNNNNN # <u>12</u> Exhibit OOOOOO # <u>13</u> Exhibit PPPPPP # <u>14</u> Exhibit QQQQQQ) (Annable, Zachery)
02/01/2021	<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order Exhibit A # <u>2</u> Exhibit Exhibit B) (Montgomery, Paige)
02/01/2021	<u>1879</u> Certificate of service re: <i>Documents Served on January 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1847</u> Notice ( <i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management,</i>

	<p><i>L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document <u>1777</u>) Entered on 1/27/2021. (Okafor, M.), <u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc <u>1848</u>) Entered on 1/27/2021. (Okafor, M.)). (Kass, Albert)</p>
02/01/2021	<p><u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
02/01/2021	<p><u>1881</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47.). (Hoffman, Juliana)</p>
02/02/2021	<p><u>1882</u> Clerk's correspondence requesting File an amended appeal from attorney for appellant. (RE: related document(s)<u>1870</u> Notice of appeal <i>and Statement of Election</i>. Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021.) Responses due by 2/5/2021. (Blanco, J.)</p>
02/02/2021	<p><u>1884</u> Request for transcript regarding a hearing held on 2/2/2021. The requested turn-around time is hourly. (Edmond, Michael)</p>
02/02/2021	<p><u>1885</u> Hearing continued (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Edmond, Michael)</p>
02/02/2021	<p><u>1886</u> Certificate of service re: <i>Documents Served on or Before January 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/02/2021	<p><u>1921</u> Hearing held on 2/2/2021. (RE: related document(s)<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Matter not taken up in light of all-day confirmation hearing.) (Edmond, Michael) (Entered: 02/09/2021)</p>
02/02/2021	

	<p>1922 Hearing held on 2/2/2021. (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Evidentiary hearing. Hearing recessed and will resume on 2/3/21.) (Edmond, Michael) (Entered: 02/09/2021)</p>
02/03/2021	<p><u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
02/03/2021	<p><u>1888</u> WITHDRAWN at #<u>3031</u>. Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (Drawhorn, Lauren) MODIFIED and terminated on 11/18/2021 (Ecker, C.).</p>
02/03/2021	<p><u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1870</u> Notice of appeal). (Draper, Douglas)</p>
02/03/2021	<p><u>1890</u> Request for transcript regarding a hearing held on 2/3/2021. The requested turn-around time is hourly. (Edmond, Michael)</p>
02/03/2021	<p><u>1891</u> Certificate of service re: <i>Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p><u>1892</u> Certificate of service re: <i>1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 Through November 30, 2020; 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 Through December 31, 2020; and 3) Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1864</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1865</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1866</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBB BBB # 4 Exhibit CCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p><u>1893</u> Certificate of service re: <i>Documents Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) (<i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1873</u> Notice (<i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor</i></p>

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	<p><i>Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1606</a> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1472</a> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <a href="#">1875</a> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1808</a> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) filed by Debtor Highland Capital Management, L.P., <a href="#">1877</a> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1822</a> List (witness/exhibit/generic), <a href="#">1866</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFFF # 4 Exhibit GGGGGG # 5 Exhibit HHHHHH # 6 Exhibit IIIIII # 7 Exhibit JJJJJJ # 8 Exhibit KKKKKK # 9 Exhibit LLLLLL # 10 Exhibit MMMMMM # 11 Exhibit NNNNNN # 12 Exhibit OOOOOO # 13 Exhibit PPPPPP # 14 Exhibit QQQQQQ) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p>1902 Bench Ruling set (RE: related document(s)<a href="#">1808</a> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1472</a> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <a href="#">1808</a>, (Ellison, T.) (Entered: 02/05/2021)</p>
02/03/2021	<p><a href="#">1915</a> Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s)<a href="#">1808</a> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1472</a> Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR'S EXHIBIT'S THAT APPEAR AT DOC. #1822, #1866 &amp; #1877 &amp; DONDERO'S EXHIBITS #6 THROUGH #12, #15, 16 &amp; #17; &amp; HIGHLAND CAPITAL MGMT. FUNDING EXHIBIT #2 AT DOC. #1863 AND JUDGE JERNIGAN TOOK JUDICIAL NOTICE OF THE DEBTOR'S SCHEDULES) (Edmond, Michael) (Entered: 02/08/2021)</p>
02/03/2021	<p>1923 Hearing held on 2/3/2021. (RE: related document(s)<a href="#">1808</a> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1472</a> Chapter 11 plan) (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank and NexPoint; L. Lambert for UST. Evidentiary hearing. Court took matter under advisement after conclusion of evidence and arguments. Bench ruling scheduled for 2/8/21 at 9:00 am.) (Edmond, Michael) (Entered: 02/09/2021)</p>
02/04/2021	<p><a href="#">1894</a> Transcript regarding Hearing Held 02/02/2021 (295 pages) RE: Confirmation Hearing, Day One (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/5/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <a href="#">1885</a> Hearing continued (RE: related document(s)<a href="#">1808</a> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1472</a> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/5/2021. (Rehling, Kathy)</p>

02/04/2021	<u>1895</u> Amended Witness and Exhibit List ( <i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1877</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit P P P P P P # <u>2</u> Exhibit R R R R R R R R # <u>3</u> Exhibit S S S S S S # <u>4</u> Exhibit T T T T T T T # <u>5</u> Exhibit U U U U U U U) (Annable, Zachery)
02/04/2021	<u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
02/05/2021	<u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/05/2021	<u>1899</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-CV-00261-L (Lindsay). (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.), <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.)
02/05/2021	<u>1900</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.) Additional attachment(s) added on 2/5/2021 (Blanco, J.).
02/05/2021	<u>1901</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.)) (Blanco, J.)
02/05/2021	<u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1905</u> Transcript regarding Hearing Held 02/03/2021 (257 pages) RE: Confirmation Hearing, Day Two (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/6/2021. (Rehling, Kathy)
02/05/2021	<u>1906</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order Exhibit A # <u>2</u> Exhibit Exhibit B) filed by Creditor Committee Official

	Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	<u>1907</u> Certificate of service re: <i>Response of the Official Committee of Unsecured Creditors to Supplemental Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) Filed by the Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	<u>1908</u> Certificate of service re: <i>Documents Served on February 4, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1895</u> Amended Witness and Exhibit List ( <i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1877</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPPP # 2 Exhibit RRRRRRR # 3 Exhibit SSSSSSS # 4 Exhibit TTTTTTT # 5 Exhibit UUUUUUU) filed by Debtor Highland Capital Management, L.P., <u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/05/2021	<u>1909</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/06/2021	<u>1910</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). Appellee designation due by 02/22/2021. (Draper, Douglas)
02/06/2021	<u>1911</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1901</u> Notice regarding the record for a bankruptcy appeal, <u>1910</u> Appellant designation). (Draper, Douglas)
02/08/2021	<u>1912</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s) <u>1910</u> Appellant designation of contents for inclusion in record on appeal) Responses due by 2/10/2021. (Blanco, J.)
02/08/2021	<u>1913</u> Request for transcript (ruling only) regarding a hearing held on 2/8/2021. The requested turn-around time is hourly. (Edmond, Michael)

02/08/2021	<u>1914</u> Motion for leave ( <i>Motion for Status Conference</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
02/08/2021	1924 Hearing held on 2/8/2021. (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz; M. Clemente for UCC; M. Lynn, J. Bonds, and B. Assink for J. Dondero; D. Rukavina and L. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Lambert for UST (numerous others; full roll call not taken). Court read bench ruling approving plan. Counsel to incorporate courts bench ruling into their own set of FOFs, COLS and Order to be submitted.) (Edmond, Michael) (Entered: 02/09/2021)
02/09/2021	<u>1916</u> Notice of hearing ( <i>Status Conference</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/22/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Vasek, Julian)
02/09/2021	<u>1917</u> Transcript regarding Hearing Held 02/08/2021 (51 pages) RE: Bench Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1902 Bench Ruling set (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u> , (Ellison, T.)). Transcript to be made available to the public on 05/10/2021. (Rehling, Kathy)
02/09/2021	<u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/09/2021	<u>1919</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/09/2021	<u>1920</u> Certificate of service re: 1) Debtors Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC; 2) Order Approving Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation; and 3) Order Approving Second Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.), <u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)). (Kass, Albert)

02/09/2021	<u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 3/2/2021. (Hesse, Gregory)
02/10/2021	<u>1926</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to). (Pomerantz, Jeffrey)
02/10/2021	<u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. (Hoffman, Juliana)
02/10/2021	<u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation). (Draper, Douglas)
02/11/2021	<u>1929</u> Order denying motion for status conference (related document # <u>1914</u> ) Entered on 2/11/2021. (Ecker, C.)
02/11/2021	<u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)
02/12/2021	<u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document # <u>1624</u> ) Entered on 2/12/2021. (Okafor, M.)
02/12/2021	<u>1932</u> Certificate of service re: 1) <i>Debtors Notice of Deposition to James Dondero in Connection with Debtors Objection to Proof of Claim Filed by HCRE Partners, LLC; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1919</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054- <u>sgj11</u> ) [ <u>claims.trclmagt</u> ] ( 26.00). Receipt number 28493529, amount \$ 26.00 (re: Doc# <u>1930</u> ). (U.S. Treasury)
02/16/2021	<u>1933</u> Agreed Motion to continue hearing on (related documents <u>1826</u> Application for administrative expenses) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Hogewood, A.)
02/16/2021	<u>1934</u> Certificate of service re: <i>Fourteenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 to and Including December 31, 2020</i> Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s) <a href="#">1927</a> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffmann Objections due by 3/3/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/17/2021	<a href="#">1935</a> Adversary case 21-03010. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G # <a href="#">8</a> Exhibit H # <a href="#">9</a> Exhibit I # <a href="#">10</a> Exhibit J # <a href="#">11</a> Adversary Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 72 (Injunctive relief – other). (Annable, Zachery)
02/17/2021	<a href="#">1936</a> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <a href="#">1643</a> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # <a href="#">1</a> Proposed Order)) Responses due by 2/24/2021. (Ecker, C.)
02/17/2021	<a href="#">1937</a> Order granting motion to continue hearing on (related document <a href="#">1933</a> ) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	<a href="#">1938</a> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1745</a> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). (Annable, Zachery)
02/18/2021	<a href="#">1939</a> Certificate of service re: <i>Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1931</a> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document <a href="#">1624</a> ) Entered on 2/12/2021. (Okafor, M.)). (Kass, Albert)
02/19/2021	<a href="#">1940</a> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <a href="#">1842</a> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	<a href="#">1941</a> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1924</a> Hearing held). (Annable, Zachery)
02/22/2021	<a href="#">1942</a> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1870</a> Notice of appeal, <a href="#">1889</a> Amended notice of appeal, <a href="#">1899</a> Notice of docketing notice of appeal/record, <a href="#">1900</a> Certificate of mailing regarding appeal, <a href="#">1901</a> Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	<a href="#">1943</a> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <a href="#">1472</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <a href="#">1808</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	

	<u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	<u>1945</u> Certificate of service re: <i>Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1938</u> <i>Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust.</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> <i>Motion to appoint trusteeMotion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c).</i> filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/24/2021	<u>1946</u> Clerk's correspondence requesting from attorney for appellant. (RE: related document(s) <u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	<u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , (Montgomery, Paige)
02/24/2021	<u>1948</u> Notice ( <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
02/24/2021	<u>1949</u> Debtor-in-possession monthly operating report for filing period December 1, 2020 to December 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2021	<u>1950</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)) No. of Notices: 8. Notice Date 02/24/2021. (Admin.)
02/25/2021	<u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). (Annable, Zachery)
02/25/2021	Receipt of Registry Funds – \$43976.75 by SD. Receipt Number 338805. (admin)
02/25/2021	Receipt of Registry Funds – \$3022.74 by SD. Receipt Number 338806. (admin)
02/25/2021	<u>1952</u> Certificate of service re: <i>Documents Served on February 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). filed by Debtor Highland Capital Management, L.P., <u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). filed by Debtor Highland

	Capital Management, L.P., <a href="#">1943</a> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <a href="#">1472</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <a href="#">1808</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.), <a href="#">1944</a> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2021	<a href="#">1953</a> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document # <a href="#">1643</a> ) Entered on 2/26/2021. (Okafor, M.)
02/26/2021	<a href="#">1954</a> Certificate of service re: 1) <i>Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1947</a> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <a href="#">1878</a> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1878</a> , filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">1948</a> Notice ( <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1943</a> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <a href="#">1472</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <a href="#">1808</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2021	<a href="#">1955</a> Motion to stay pending appeal (related documents <a href="#">1943</a> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
02/28/2021	<a href="#">1956</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">1953</a> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document <a href="#">1643</a> ) Entered on 2/26/2021. (Okafor, M.)) No. of Notices: 3. Notice Date 02/28/2021. (Admin.)
03/01/2021	<a href="#">1957</a> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <a href="#">1943</a> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # <a href="#">1</a> Exhibit A)(Rukavina, Davor) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/01/2021	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal.ntcapl] ( 298.00). Receipt number 28523950, amount \$ 298.00 (re: Doc# <a href="#">1957</a> ). (U.S. Treasury)
03/01/2021	<a href="#">1958</a> Motion for expedited hearing(related documents <a href="#">1955</a> Motion to stay pending appeal) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)

03/01/2021	<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
03/01/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28524853, amount \$ 26.00 (re: Doc# <u>1959</u> ). (U.S. Treasury)
03/01/2021	<u>1960</u> Order Denying Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document # <u>1745</u> ) Entered on 3/1/2021. (Okafor, M.)
03/01/2021	<u>1961</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,). (Hoffman, Juliana)
03/02/2021	<u>1962</u> Certificate of service re: <i>Appellees Amended Supplemental Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2021	<u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. (Hoffman, Juliana)
03/03/2021	<u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/03/2021	<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.)
03/03/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28532838, amount \$ 298.00 (re: Doc# <u>1966</u> ). (U.S. Treasury)
03/03/2021	<u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. (Hoffman, Juliana)
03/03/2021	<u>1969</u> Objection to (related document(s): <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)

03/04/2021	<u>1970</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # <u>1</u> Exhibit)(Taylor, Clay) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28537086, amount \$ 298.00 (re: Doc# <u>1970</u> ). (U.S. Treasury)
03/04/2021	<u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit Opinion) (Draper, Douglas)
03/04/2021	<u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/18/2021. (Draper, Douglas) Terminated appeal per circuit court's order dated 09/07/02022 on 06/21/2024 (Whitaker, Sheniqua).
03/04/2021	<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28537308, amount \$ 298.00 (re: Doc# <u>1972</u> ). (U.S. Treasury)
03/04/2021	<u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery)
03/05/2021	<u>1976</u> Certificate of No Objection Regarding First Monthly Fee Application filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35.). (Hesse, Gregory)
03/05/2021	<u>1977</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 12 Number of appellee volumes: 13. Civil Case Number: 3:20-CV-03390-X (RE: related document(s) <u>1347</u> Notice of appeal ) (Blanco, J.)
03/05/2021	<u>1978</u> Notice of docketing COMPLETE record on appeal. 3:20-CV-03390-X (RE: related document(s) <u>1347</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Blanco, J.)
03/05/2021	<u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u>

	and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)
03/05/2021	<u>1980</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297). (Hoffman, Juliana)
03/07/2021	<u>1981</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 03/07/2021. (Admin.)
03/08/2021	<u>1986</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1987</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1988</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/08/2021	<u>1990</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1991</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/08/2021	<u>1992</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)

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03/08/2021	<p><u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u>, (Annable, Zachery)</p>
03/08/2021	<p><u>1995</u> Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)</p>
03/08/2021	<p><u>1996</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)</p>
03/08/2021	<p><u>1997</u> Certificate of service re: <i>Documents Served on or Before March 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
03/08/2021	<p><u>1998</u> Certificate of service re: 1) [<i>Customized for Rule 3001(e)(1) or 3001(e)(3)</i>] <i>Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise &amp; Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise &amp; Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise &amp; Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Kass, Albert)</i></p>
03/08/2021	

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	<p><u>1999</u> Certificate of service re: 1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP, <u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan &amp; Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1512</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. filed by Creditor Hain Capital Group, LLC, <u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1591</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP). (Kass, Albert)</p>
03/09/2021	<p><u>2000</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00538-N. (RE: related document(s)<u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2001</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00539-N. (RE: related document(s)<u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). (Hogewood, A.)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2002</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00546-L. (RE: related document(s)<u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2003</u> Application for compensation (<i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)</p>
03/09/2021	<p><u>2004</u> Application for compensation (<i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)</p>
03/09/2021	<p><u>2005</u> Application for compensation (<i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period</i></p>

	<i>from September 1, 2020 through September 30, 2020) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)</i>
03/09/2021	<u>2006</u> Certificate of service re: <i>Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	<u>2007</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
03/10/2021	<u>2008</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00550-L. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/10/2021	<u>2009</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
03/10/2021	<u>2011</u> Certificate of service re: <i>Order Approving Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)). (Kass, Albert)
03/10/2021	<u>2012</u> BNC certificate of mailing. (RE: related document(s) <u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/10/2021	<u>2013</u> BNC certificate of mailing. (RE: related document(s) <u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan).) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/11/2021	<u>2014</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1972</u> Notice of appeal). (Draper, Douglas)
03/11/2021	

	<u>2015</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1957</u> Notice of appeal). (Rukavina, Davor)
03/11/2021	<u>2016</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1957</u> Notice of appeal). Appellee designation due by 03/25/2021. (Rukavina, Davor)
03/11/2021	<u>2017</u> Certificate of service re: <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/12/2021	<u>2018</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 6 Number of appellee volumes: 1. Civil Case Number: 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	<u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	<u>2021</u> Notice of transmittal 20-CV-03408-G 13 SEALED DOCUMENTS (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/12/2021	<u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021 (Rielly, Bill).
03/12/2021	<u>2023</u> Joinder by <i>the Official Committee of Unsecured Creditors</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2022</u> Response). (Hoffman, Juliana)

03/12/2021	<u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	<u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	<u>2026</u> Certificate of service re: 1) <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through July 31, 2020</i> ; 2) <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 Through August 31, 2020</i> ; and 3) <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 Through September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2003</u> Application for compensation ( <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2004</u> Application for compensation ( <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2005</u> Application for compensation ( <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP). (Kass, Albert)
03/12/2021	<u>2027</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1954</u> Certificate of service re: 1) <i>Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> ; and 2) <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)

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03/12/2021	<u>2028</u> Certificate of service re: 1) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 Through January 31, 2021</i> ; and 2) <i>Notice of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2007</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> <i>Order granting application to employ Development Specialists, Inc. as Other Professional</i> (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2009</u> <i>Notice of hearing</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> <i>Application for administrative expenses</i> Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/15/2021	<u>2030</u> Debtor-in-possession monthly operating report for filing period January 1, 2021 to January 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/15/2021	<u>2032</u> Notice of transmittal 3:20-CV-03390-X. CLERKS OFFICE OVERLOOKED SECOND APPELLEE. AMENDED MINI RECORD TO INCLUDE SECOND APPELLEE INDEX. ATTACHED ALSO: APPELLEE VOL. 27 (RE: related document(s) <u>1978</u> <i>Notice of docketing COMPLETE</i> record on appeal. 3:20-CV-03390-X (RE: related document(s) <u>1347</u> <i>Notice of appeal</i> filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> <i>Order on motion to compromise controversy</i> ). (Blanco, J.)). (Blanco, J.)
03/16/2021	<u>2033</u> Motion for Certification to Court of Appeals ( <i>Joint Motion</i> ) Filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Get Good Trust, The Dugaboy Investment Trust, Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)
03/16/2021	<u>2034</u> Order certifying appeals of the confirmation order for direct appeal to the United States Court of appeals for the Fifth Circuit (Related Doc # <u>2033</u> ) Entered on 3/16/2021. (Okafor, M.)
03/16/2021	<u>2035</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1944</u> <i>Application for compensation Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/). (Pomerantz, Jeffrey)
03/16/2021	<u>2036</u> Reply to (related document(s): <u>2022</u> <i>Response</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
03/16/2021	<u>2037</u> Reply to (related document(s): <u>2022</u> <i>Response</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/16/2021	<u>2038</u> <i>Second Notice of Additional Services to be Provided by Deloitte Tax LLP</i> filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/16/2021	<u>2039</u> <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> <i>ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE</i>

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	DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hayward, Melissa)
03/17/2021	<u>2040</u> Statement of issues on appeal, filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). (Hogewood, A.)
03/17/2021	<u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)
03/17/2021	<u>2042</u> Certificate of service re: 1) Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order; and 2) Omnibus Objection of the Official Committee of Unsecured Creditors Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtors Omnibus Objection to Motions for Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021. filed by Debtor Highland Capital Management, L.P., <u>2023</u> Joinder by the Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2022</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/17/2021	<u>2043</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M) (Vasek, Julian)
03/17/2021	<u>2044</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bhawika Jain To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2045</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Michael Beispiel To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2046</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Sang Kook (Michael) Jeong To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2047</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Phoebe Stewart To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	

	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2044</u> ). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2045</u> ). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2046</u> ). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2047</u> ). (U.S. Treasury)
03/17/2021	<u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
03/18/2021	<u>2052</u> Notice of transmittal to submit Amended Mini Record Vol. 1 to remove appellee index and to disregard Appellee Record Vol. 8 filed at doc 27 in 3:20-CV-03408-G (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/18/2021	<u>2053</u> Clerk's correspondence requesting Amended designation from attorney for Appellant. (RE: related document(s) <u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)) Responses due by 3/24/2021. (Blanco, J.)
03/18/2021	<u>2054</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). Appellee designation due by 04/1/2021. (Draper, Douglas)
03/18/2021	<u>2055</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). (Draper, Douglas)
03/18/2021	<u>2056</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal). (Taylor, Clay)
03/18/2021	<u>2057</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal, <u>2056</u> Statement of issues on appeal). Appellee designation due by 04/1/2021. (Taylor, Clay)
03/18/2021	<u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33) (Annable, Zachery)

03/18/2021	<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. (Annable, Zachery)
03/18/2021	<u>2060</u> Motion to recuse Judge Jernigan Filed by Interested Party James Dondero (Lang, Michael)
03/18/2021	<u>2061</u> Brief in support filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/18/2021	<u>2062</u> Support/supplemental document <i>Appendix to Motion to Recuse</i> filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/19/2021	<u>2063</u> Request for transcript regarding a hearing held on 3/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
03/19/2021	<u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/19/2021	<u>2065</u> Court admitted exhibits date of hearing March 19, 2021 (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).) (COURT ADMITTED MOVANT'S EXHIBIT'S #A THROUGH #M BY DAVOR RUKAVINA & DEFENDANT'S EXHIBIT'S #1 THROUGH #33 BY JEFFREY POMERANTZ) (Edmond, Michael)
03/19/2021	<u>2066</u> Witness List ( <i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021 (Rielly, Bill).
03/19/2021	<u>2067</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court

	determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2068 Hearing held on 3/19/2021. (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2069 Hearing held on 3/19/2021. (RE: related document(s) <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	2070 Hearing held on 3/19/2021. (RE: related document(s) <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.) (Edmond, Michael)
03/19/2021	<u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021 (Tello, Chris).
03/19/2021	<u>2072</u> Certificate of service re: 1) <i>Second Notice of Additional Services to be Provided by Deloitte Tax LLP</i> ; and 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2038</u> <i>Second Notice of Additional Services to be Provided by Deloitte Tax LLP</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2039</u> <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October</i>

	<p>16, 2019 to January 31, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/19/2021	<p>2077 Hearing set – follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).) Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u>, (Ellison, T.) (Entered: 03/22/2021)</p>
03/20/2021	<p><u>2073</u> Transcript regarding Hearing Held 03/19/2021 (82 pages) RE: Motions/Joinders to Stay Pending Appeal. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/18/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, <a href="mailto:kathyrehlingtranscripts@gmail.com">kathyrehlingtranscripts@gmail.com</a>, Telephone number 972-786-3063. (RE: related document(s) <u>2067</u> Hearing held on 3/19/2021. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), <u>2068</u> Hearing held on 3/19/2021. (RE: related document(s)<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), <u>2069</u> Hearing held on 3/19/2021. (RE: related document(s)<u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order</p>

	<p>confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2070 Hearing held on 3/19/2021. (RE: related document(s) <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.)). Transcript to be made available to the public on 06/18/2021. (Rehling, Kathy)</p>
03/22/2021	<p><u>2074</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>2041</u> Appellant designation). (Hogewood, A.)</p>
03/22/2021	<p><u>2075</u> Notice to take deposition of James P. Seery filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)</p>
03/22/2021	<p><u>2076</u> Order granting motion to continue hearing on (related document # <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.)</p>
03/22/2021	<p><u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, (Annable, Zachery)</p>
03/22/2021	<p><u>2079</u> Declaration re: (<i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl &amp; Jones LLP as Attorney). (Annable, Zachery)</p>
03/22/2021	<p><u>2080</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>2016</u> Appellant designation). (Rukavina, Davor)</p>

03/23/2021	<u>2081</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 4/6/2021. (Ecker, C.)
03/23/2021	<u>2082</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Order) (Draper, Douglas)
03/23/2021	<u>2083</u> Order denying motion to recuse (related document # <u>2060</u> ) Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document # <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document # <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document # <u>1971</u> ), denying Joinder by filed by Interested Party James Dondero (related document # <u>1973</u> ). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order Exhibit A # <u>2</u> Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u> , (Montgomery, Paige)
03/23/2021	<u>2086</u> Support/supplemental document ( <i>Letter to Court Regarding Mandatory Stay Pending Appeal Bond Hearing</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>2077</u> Hearing set/continued, <u>2084</u> Order on motion to stay pending appeal, Order on motion to stay pending appeal). (Rukavina, Davor)
03/23/2021	<u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021 (Tello, Chris).
03/23/2021	<u>2088</u> Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 34) (Annable, Zachery)
03/23/2021	<u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/23/2021	

	<p><u>2090</u> Certificate of service re: <i>Debtor's Witness and Exhibit List with Respect to Hearing to be Held on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/23/2021	<p><u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021 (Rielly, Bill).</p>
03/24/2021	<p><u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)</p>
03/24/2021	<p><u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)</p>
03/24/2021	<p><u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)</p>
03/24/2021	<p><u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)</p>
03/24/2021	<p><u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)</p>
03/24/2021	<p><u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)</p>
03/24/2021	<p><u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party</p>

	CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2099</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2100</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2101</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2102</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2103</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2104</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2105</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2106</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2107</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2108</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2109</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2110</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2111</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2112</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)

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03/24/2021	<u>2113</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2114</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2115</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2116</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,7). (Hoffman, Juliana)
03/24/2021	<u>2117</u> Certificate of service re: <i>Documents Served on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2066</u> Witness List ( <i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021. filed by Debtor Highland Capital Management, L.P., <u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2092</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2093</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2094</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2096</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2097</u> ). (U.S. Treasury)

03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2098</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2099</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2100</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2101</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2102</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2103</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2104</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2105</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2106</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2107</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2108</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2109</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2110</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2111</u> ). (U.S. Treasury)
03/25/2021	

	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2112</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2113</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2114</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2115</u> ). (U.S. Treasury)
03/25/2021	<u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2120</u> INCORRECT ENTRY: Attorney to refile. Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana) Modified on 3/26/2021 (Ecker, C.).
03/25/2021	<u>2121</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u> ), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u> ). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/25/2021. (Admin.)
03/26/2021	<u>2122</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana)
03/26/2021	<u>2123</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
03/26/2021	<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. (Pomerantz, Jeffrey)

03/26/2021	<p><u>2125</u> Certificate of service re: <i>1) Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors; 2) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: <i>(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>70</u> Application to employ Pachulski Stang Ziehl &amp; Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/26/2021	<p><u>2126</u> Certificate of service re: <i>Documents Served on March 23, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u>), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u>), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u>), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u>). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u>, Entered on 3/23/2021. (Okafor, M.), <u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021. filed by Debtor Highland Capital Management, L.P., <u>2088</u> Amended Exhibit List filed by Debtor Highland</p>

	Capital Management, L.P. (RE: related document(s) <u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) filed by Debtor Highland Capital Management, L.P., <u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/26/2021	<u>2127</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)
03/29/2021	<u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
03/29/2021	<u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
03/29/2021	<u>2130</u> Certificate of service re: <i>Supplemental Order on Motions for Stay Pending Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)). (Kass, Albert)
03/29/2021	<u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> )). (Annable, Zachery)
03/29/2021	<u>2132</u> Certificate of Conference filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal). (Sosland, Martin)
03/29/2021	<u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. (Annable, Zachery)
03/29/2021	<u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/29/2021	

	<u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2021	<u>2136</u> Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2137</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2138</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.).
03/31/2021	<u>2139</u> Withdrawal of claim(s): ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/31/2021	<u>2140</u> Order granting motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC(related document # <u>2128</u> ) Entered on 3/31/2021. (Okafor, M.)
03/31/2021	<u>2141</u> Certificate of service re: <i>1) Debtor's Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC; and 2) Debtor's Second Amended Notice of Deposition to James Dondero in Connection with Debtor's Objection to Proof of Claim Filed by HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	<u>2142</u> Adversary case 21-03020. Complaint by UBS Securities LLC, UBS AG London Branch against Highland Capital Management, L.P.. Fee Amount \$350. Nature(s) of suit: 72 (Injunctive relief – other). (Sosland, Martin)
03/31/2021	<u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)
03/31/2021	<u>2144</u> Certificate of service re: <i>1) Amended Notice of Status Conference; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2123</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . filed by Debtor Highland Capital Management, L.P., <u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/31/2021	<u>2145</u> Certificate of service re: <i>Doucments Served on March 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> )). filed by Debtor Highland Capital Management, L.P., <u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. filed by Debtor Highland Capital Management, L.P., <u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/01/2021	<u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document # <u>2129</u> ) Entered on 4/1/2021. (Okafor, M.)
04/01/2021	Adversary case 3:20-ap-3105 closed (Ecker, C.)
04/01/2021	<u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file <i>Adversary Complaint and Other Materials Under Seal</i> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/01/2021	<b>2148 SEALED document regarding: (Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2146</u> Order on motion to seal). (Annable, Zachery)
04/01/2021	<u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # <u>1</u> Exhibit)(Lang, Michael)
04/01/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcap] ( 298.00). Receipt number 28609730, amount \$ 298.00 (re: Doc# <u>2149</u> ). (U.S. Treasury)
04/02/2021	<u>2150</u> Certificate of service re: <i>re: Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2138</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/02/2021	<u>2151</u> Motion to appear pro hac vice for Zachary F. Proulx. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28612120, amount \$ 100.00 (re: Doc# <u>2151</u> ). (U.S. Treasury)
04/02/2021	<u>2152</u> Motion to appear pro hac vice for Kathryn K. George. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)

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04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28612132, amount \$ 100.00 (re: Doc# <u>2152</u> ). (U.S. Treasury)
04/02/2021	<u>2153</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). (Attachments: # <u>1</u> Ex. 1 # <u>2</u> Ex. 2 # <u>3</u> Ex. 3 # <u>4</u> Ex. 4 # <u>5</u> Ex. 5 # <u>6</u> Ex. 6 # <u>7</u> Ex. 7) (Assink, Bryan)
04/02/2021	<u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James Donderos Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/02/2021	<u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal, ). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.).
04/02/2021	<u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1970</u> Notice of appeal). (Annable, Zachery)
04/02/2021	<u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1966</u> Notice of appeal). (Annable, Zachery)
04/03/2021	<u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). (Montgomery, Paige)
04/05/2021	<u>2159</u> Amended Witness and Exhibit List <i>for April 5, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2158</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Montgomery, Paige)
04/05/2021	<u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2162</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/05/2021	<u>2163</u> Certificate of service re: <i>1) Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152; and 2) Order Approving Joint Stipulation as to Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2139</u> Withdrawal of claim(s): ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain</i>

	<i>Investment Trust's Proof of Claim No. 152</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)). (Kass, Albert)
04/05/2021	2164 Hearing held on 4/5/2021. (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.) (Edmond, Michael) (Entered: 04/06/2021)
04/06/2021	<u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document # <u>2151</u> ) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document # <u>2152</u> ) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2167</u> Clerk's correspondence requesting to amend document from attorney for Interested Party. (RE: related document(s) <u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) Responses due by 4/8/2021. (Whitaker, Sheniqua)
04/06/2021	<u>2168</u> Request for hearing filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>2081</u> Clerk's correspondence). (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
04/06/2021	<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal). (Lang, Michael)
04/06/2021	<u>2170</u> Certificate of service re: <i>1) Order Granting Debtor's Motion for Leave to File Under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal; and 2) Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document <u>2129</u> ) Entered on 4/1/2021. (Okafor, M.), <u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2021	<u>2171</u> Request for transcript regarding a hearing held on 4/5/2021. The requested turn-around time is hourly. (Edmond, Michael)
04/07/2021	<u>2172</u> Certificate of service re: <i>Documents Served on or Before April 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James Dondero's Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland

	<p>Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal, ). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.). filed by Debtor Highland Capital Management, L.P., <u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1970</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1966</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
04/07/2021	<p><u>2173</u> Certificate of service re: <i>Documents Served on April 5, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2159</u> Amended Witness and Exhibit List for April 5, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2158</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2162</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/08/2021	<p><u>2174</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80.). (Hesse, Gregory)</p>
04/08/2021	<p><u>2175</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54.). (Hesse, Gregory)</p>
04/08/2021	<p><u>2176</u> Transcript regarding Hearing Held 04/05/2021 (75 pages) RE: Motion to Compel (1878). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2164 Hearing held on 4/5/2021. (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.)). Transcript to be made available to the public on 07/7/2021. (Rehling, Kathy)</p>
04/08/2021	<p><u>2177</u> Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document # <u>1878</u>) Entered on 4/8/2021. (Okafor, M.)</p>

04/08/2021	<p><u>2178</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document <u>2151</u>) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)</p>
04/08/2021	<p><u>2179</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document <u>2152</u>) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)</p>
04/09/2021	<p><u>2181</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2125</u> Certificate of service re: 1) <i>Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors</i>; 2) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i>; and 3) <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: <i>(Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>70</u> Application to employ Pachulski Stang Ziehl &amp; Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>

04/09/2021	<u>2182</u> Application for compensation ( <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: \$153,957.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
04/09/2021	<u>2183</u> Motion to withdraw as attorney (Brian P. Shaw) Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Jennifer G. Terry, Joshua Terry (Attachments: # <u>1</u> Proposed Order) (Shaw, Brian)
04/09/2021	<u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)
04/11/2021	<u>2185</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 04/11/2021. (Admin.)
04/12/2021	<u>2186</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Jennifer G. Terry, Joshua Terry. (Prostok, Jeff)
04/13/2021	<u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21–CV–00261–L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)
04/13/2021	<u>2189</u> Order granting motion to withdraw as attorney (attorney Brian Patrick Shaw terminated). (related document # <u>2183</u> ) Entered on 4/13/2021. (Ecker, C.)
04/13/2021	<u>2190</u> Notice of docketing COMPLETE record on appeal. 3:21–CV–00261–L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal. Related document(s) <u>1788</u> Order on motion to compromise controversy. <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)
04/13/2021	<u>2191</u> Notice of Transmittal 3:21–CV–00261–L (Lindsay) TRANSMITTED 5 SEALED DOCUMENTS (RE: related document(s) <u>2190</u> Notice of docketing COMPLETE record on appeal. 3:21–CV–00261–L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal. Related document(s) <u>1788</u> Order on motion to compromise controversy. <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)). (Blanco, J.)
04/13/2021	<u>2192</u> Certificate of service re: 1) <i>Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> ; 2) <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2020 Through December 31, 2020</i> ; and 3) <i>Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2177</u> Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document <u>1878</u> ) Entered on 4/8/2021. (Okafor, M.), <u>2182</u> Application for compensation ( <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: \$153,957.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (related document(s) <u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE:

	related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.). (Kass, Albert)
04/13/2021	<u>2193</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2003</u> Application for compensation ( <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i> ) for Deloitte Ta). (Annable, Zachery)
04/13/2021	<u>2194</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2004</u> Application for compensation ( <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Deloitte Tax LLP, O). (Annable, Zachery)
04/13/2021	<u>2195</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2005</u> Application for compensation ( <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Deloitte Tax L). (Annable, Zachery)
04/14/2021	<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/14/2021	<u>2197</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> )). (Annable, Zachery)
04/14/2021	<u>2198</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> )). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (Annable, Zachery)
04/15/2021	<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/15/2021	<u>2200</u> Declaration re: ( <i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
04/15/2021	<u>2201</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with</i>

	<i>UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , (Annable, Zachery)
04/15/2021	<u>2203</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal).) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
04/15/2021	<u>2204</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2169</u> Amended Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
04/15/2021	<u>2205</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). (Lang, Michael)
04/15/2021	<u>2206</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2169</u> Amended notice of appeal). Appellee designation due by 04/29/2021. (Lang, Michael)
04/15/2021	<u>2207</u> Certificate of service re: <i>(Supplemental) Debtor's Third Omnibus Objection to Certain No Liability Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/15/2021	<u>2208</u> INCORRECT EVENT: Attorney to refile. <i>Notice of Transfer of Claim Other Than for Security</i> filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/15/2021	<u>2209</u> INCORRECT EVENT: Attorney to refile. <i>Notice of Transfer of Claim Other Than for Security</i> filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/16/2021	

	<u>2210</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s) <u>2206</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2169</u> Amended notice of appeal). Appellee designation due by 04/29/2021.) Responses due by 4/20/2021. (Blanco, J.)
04/16/2021	<u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff)
04/16/2021	<u>2212</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management L.P. (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28644419, amount \$ 26.00 (re: Doc# <u>2211</u> ). (U.S. Treasury)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28644419, amount \$ 26.00 (re: Doc# <u>2212</u> ). (U.S. Treasury)
04/16/2021	<u>2213</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2206</u> Appellant designation). (Lang, Michael)
04/16/2021	<u>2214</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
04/16/2021	<u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28646419, amount \$ 26.00 (re: Doc# <u>2215</u> ). (U.S. Treasury)
04/16/2021	<u>2216</u> Certificate of service re: <i>1) Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; 2) Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 3) Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2197</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips

	<p>Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>). filed by Debtor Highland Capital Management, L.P., <u>2198</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/18/2021	<p><u>2217</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00879-K. (RE: related document(s)<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal).) (Whitaker, Sheniqua)</p>
04/19/2021	<p><u>2218</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 t). (Pomerantz, Jeffrey)</p>
04/19/2021	<p><u>2219</u> Certificate of service re: <i>Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(1) or 3001(e)(3) [Re Docket No. 1959]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC). (Kass, Albert)</p>
04/19/2021	<p><u>2220</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>; 2) <i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i>; and 3) <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2200</u> Declaration re: (<i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>2201</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/19/2021	<p><u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana</p>

	Hoffman Objections due by 5/10/2021. (Hoffman, Juliana)
04/20/2021	<u>2222</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
04/20/2021	<u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$1,277,710.00, Expenses: \$13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. (Pomerantz, Jeffrey)
04/20/2021	<u>2224</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Interested Party CPCM, LLC. (Smith, Frances)
04/20/2021	<u>2225</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCM, LLC. (Smith, Frances) Filed by Interested Party CPCM, LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roerber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Smith, Frances)
04/20/2021	<u>2226</u> Motion to continue hearing on (related documents <u>2059</u> Objection to claim) Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
04/20/2021	<u>2227</u> Motion for expedited hearing(related documents <u>2226</u> Motion to continue) Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
04/20/2021	<u>2228</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2214</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/20/2021	<u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/20/2021	<u>2230</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP

	as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , (Annable, Zachery)
04/21/2021	<u>2231</u> Certificate of service re: Notice of Appearance, Preliminary Response to Debtors Third Omnibus Objection to Certain No Liability Claims, Motion to Continue Hearing on Debtors Third Omnibus Objection to Certain Liability Claims, and Motion for Setting and Request for Expedited Hearing filed by Interested Party CPCMC, LLC (RE: related document(s) <u>2224</u> Notice of appearance and request for notice, <u>2225</u> Response to objection to claim, <u>2226</u> Motion to continue hearing on (related documents <u>2059</u> Objection to claim), <u>2227</u> Motion for expedited hearing(related documents <u>2226</u> Motion to continue) ). (Smith, Frances)
04/21/2021	<u>2232</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , (Annable, Zachery)
04/21/2021	<u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. (Hoffman, Juliana)
04/22/2021	<u>2234</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
04/23/2021	<u>2235</u> INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	<u>2236</u> Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2237</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).

04/23/2021	<p><u>2239</u> Certificate of service re: <i>Documents Served on April 20, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$1,277,710.00, Expenses: \$13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. filed by Debtor Highland Capital Management, L.P., <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2230</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/23/2021	<p><u>2240</u> Certificate of service re: <i>1) Notice of Hearing; and 2) Fifth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through and Including February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2232</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u>, filed by Debtor Highland Capital Management, L.P., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
04/23/2021	<p><u>2241</u> INCORRECT EVENT: See #<u>2248</u> for correction. Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)<u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.)). (Attachments: # <u>1</u> Exhibit 1 Complaint # <u>2</u> Exhibit 2 Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/27/2021 (Ecker, C.).</p>
04/23/2021	<p><u>2242</u> DUPLICATE ENTRY: See # <u>2241</u>. Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)<u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.)). (Attachments: # <u>1</u> Exhibit 1 Complaint # <u>2</u> Exhibit 2 Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/26/2021 (Ecker, C.).</p>
04/23/2021	

	<u>2248</u> Motion to Reconsider (related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.) (Entered: 04/27/2021)
04/24/2021	<u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
04/26/2021	<u>2244</u> Notice of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
04/26/2021	<u>2245</u> Certificate of service re: <i>Notice of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2234</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/26/2021	<u>2246</u> Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1853</u> and for <u>1655</u> and for <u>2233</u> and for <u>2221</u> , (Hoffman, Juliana)
04/27/2021	<u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/27/2021	<u>2249</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , (Annable, Zachery)
04/27/2021	<u>2250</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$). (Hoffman, Juliana)

04/27/2021	<u>2251</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00.). (Hoffman, Juliana)
04/27/2021	<u>2252</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , (Annable, Zachery)
04/28/2021	<u>2253</u> Certificate of service re: 1) <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> ; 2) <i>Debtor's Memorandum of Law in Support of Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> ; and 3) <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2235</u> INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2236</u> Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2237</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2021	<u>2254</u> Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2248</u> , (Sbaiti, Mazin)
04/29/2021	<u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document # <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)
04/29/2021	<u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021. (Draper, Douglas)
04/29/2021	<u>2257</u> Certificate of service re: filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. ). (Attachments: # <u>1</u> Exhibit – Matrix) (Draper, Douglas)

04/29/2021	<p><u>2258</u> Certificate of service re: <i>1) Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>2244</u> Notice of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/29/2021	<p><u>2259</u> Certificate of service re: <i>1) Notice of Hearing on the Fourth and Fifth Interim Applications for Compensation and Reimbursement of Expenses; and 2) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2246</u> Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1853</u> and for <u>1655</u> and for <u>2233</u> and for <u>2221</u>, filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2252</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2247</u> Motion for order to show cause (<i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/30/2021	<p><u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. (Hoffman, Juliana)</p>
04/30/2021	<p><u>2261</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount \$137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)</p>
04/30/2021	<p><u>2262</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount \$50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)</p>
04/30/2021	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28681233, amount \$ 26.00 (re: Doc# <u>2261</u>).</p>

	(U.S. Treasury)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims, trclmagt] ( 26.00). Receipt number 28681233, amount \$ 26.00 (re: Doc# <u>2262</u> ). (U.S. Treasury)
04/30/2021	<u>2263</u> Assignment/Transfer of Claim. Fee Amount \$156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims, trclmagt] ( 156.00). Receipt number 28682148, amount \$ 156.00 (re: Doc# <u>2263</u> ). (U.S. Treasury)
04/30/2021	<u>2264</u> Certificate of service re: <i>(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	<u>2265</u> Certificate of service re: <i>Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)). (Kass, Albert)
05/03/2021	<u>2266</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Sahana Abayarathna To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
05/03/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims, trclmagt] ( 26.00). Receipt number 28684014, amount \$ 26.00 (re: Doc# <u>2266</u> ). (U.S. Treasury)
05/03/2021	<u>2267</u> Status conference held on 5/3/2021., Trial set (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.) Trial date set for 9/21/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with

	evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this. (Ellison, T.)
05/03/2021	<u>2269</u> INCORRECT ENTRY: DUPLICATE ENTRY. Hearing held on 5/3/2021. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this.) (Edmond, Michael) Modified on 5/4/2021 (Tello, Chris). (Entered: 05/04/2021)
05/04/2021	<u>2268</u> Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P.) <i>Limited Preliminary Objection</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
05/04/2021	<u>2270</u> PDF with attached Audio File. Court Date & Time [05/03/2021 01:33:52 PM]. File Size [ 3670 KB ]. Run Time [ 00:15:40 ]. (admin).
05/04/2021	<u>2271</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2133</u> Objection to claim). (Annable, Zachery)
05/04/2021	<u>2272</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2182</u> Application for compensation ( <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i> ) for Deloitte). (Annable, Zachery)
05/04/2021	<u>2296</u> Order from circuit court re: appeal on appellate case number: 21-10449, (RE: related document(s) <u>1957</u> Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). IT IS ORDERED that the motion of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. for leave to appeal under 28 U.S.C. § 158(d) is GRANTED. Civil Case 3:21-cv-00538-N. Entered on 5/4/2021 (Whitaker, Sheniqua) (Entered: 05/12/2021)
05/05/2021	<u>2273</u> Debtor-in-possession quarterly operating report (post-confirmation) for filing period January 1, 2021 to March 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	<u>2274</u> Objection to (related document(s): <u>1826</u> Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	<u>2275</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P.</i>

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	<i>and NexPoint Advisors, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2274</u> Objection). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
05/05/2021	<u>2276</u> Certificate of service re: <i>Seventeenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2021 to and Including March 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc. for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
05/06/2021	<u>2277</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). (Annable, Zachery)
05/06/2021	<u>2278</u> Response opposed to (related document(s): <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
05/06/2021	<u>2279</u> Brief in opposition filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ), <u>2278</u> Response). (Drawhorn, Lauren)
05/06/2021	<u>2280</u> Motion to file document under seal. <i>Appendix in Support of Response to Motion to Disqualify</i> Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Appendix) (Drawhorn, Lauren)
05/07/2021	<u>2281</u> Notice of Appearance and Request for Notice by Brant C. Martin filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Martin, Brant)
05/07/2021	<u>2282</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/07/2021	<u>2283</u> Application for compensation ( <i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: \$69,327.00, Expenses: \$6,478.70. Filed by Attorney Hayward PLLC (Annable, Zachery)
05/07/2021	<u>2284</u> Order granting motion to continue hearing on (related document # <u>2282</u> ) (related documents Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relating Hearing to be held on 6/1/2021 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for <u>2229</u>. Entered on 5/7/2021. (Okafor, M.)</i> )
05/10/2021	<u>2285</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Clubok, Andrew)

05/10/2021	<u>2286</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , (Annable, Zachery)
05/10/2021	<u>2287</u> Certificate of service re: 1) <i>Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> ; and 2) <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2274</u> Objection to (related document(s): <u>1826</u> Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2275</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2274</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2021	<u>2288</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0.). (Hoffman, Juliana)
05/11/2021	<u>2289</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/11/2021	<u>2290</u> Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
05/11/2021	<u>2291</u> Notice <i>Notice of Return of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2290</u> Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust.). (Draper, Douglas)
05/11/2021	<u>2292</u> Certificate of service re: <i>Notice of Cancellation of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2277</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2021	<u>2293</u> Supplemental Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P.)with <i>Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
05/12/2021	<u>2294</u> Reply to (related document(s): <u>2278</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

05/12/2021	<u>2295</u> Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/12/2021	<u>2297</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , (Annable, Zachery)
05/12/2021	<u>2298</u> Certificate of service re: 1) <i>Motion to Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ; 2) <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 Through November 30, 2020</i> ; and 3) <i>Order Continuing Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2282</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2283</u> Application for compensation ( <i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: \$69,327.00, Expenses: \$6,478.70. Filed by Attorney Hayward PLLC, <u>2284</u> Order granting motion to continue hearing on (related document <u>2282</u> ) (related documents Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Hearing to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u>, Entered on 5/7/2021. (Okafor, M.). (Kass, Albert)</i>
05/13/2021	<u>2299</u> Clerk's notice of fees due in the amount of \$207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s) <u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
05/13/2021	<u>2300</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey). (Pomerantz, Jeffrey)
05/13/2021	<u>2301</u> Certificate of service re: <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2286</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

05/13/2021	<u>2302</u> Certificate of service re: <i>Notice of Deposition</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2289</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	<u>2303</u> Certificate of service re: [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)</i> [Re Docket Nos. 2261 and 2262] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2261</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount \$137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, <u>2262</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount \$50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC). (Kass, Albert)
05/13/2021	Receipt Number 338881, Fee Amount \$207.00 (RE: related document(s) <u>2299</u> Clerk's notice of fees due in the amount of \$207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s) <u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)) (Floyd, K) (Entered: 05/14/2021)
05/14/2021	<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/14/2021	<u>2305</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Sosland, Martin)
05/14/2021	<u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit) (Hoffman, Juliana)
05/14/2021	<u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u> , (Annable, Zachery)
05/14/2021	<u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Annable, Zachery)
05/14/2021	<u>2309</u> Response to show cause order (related document(s): <u>2255</u> Order on motion to show cause) filed by Respondent Mark Patrick. (Phillips, Louis)
05/14/2021	

	<u>2310</u> Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/14/2021	<u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/14/2021	<u>2312</u> Objection to (related document(s): <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P., <u>2255</u> Order on motion to show cause. MODIFIED to correct linkage on 5/17/2021 (Ecker, C.).
05/14/2021	<u>2313</u> Response to show cause order (related document(s): <u>2255</u> Order on motion to show cause) filed by Plaintiff The Charitable DAF Fund, L.P.. (Attachments: # <u>1</u> Appendix) (Sbaiti, Mazin)
05/14/2021	<u>2314</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Draper, Douglas)
05/14/2021	<u>2315</u> Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2311</u> Response). (Hoffman, Juliana)
05/14/2021	<u>2316</u> Motion to withdraw as attorney (John J. Kane, Brian W. Clark and the law firm of Kane Russell Coleman Logan PC) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Proposed Order) (Kane, John)
05/17/2021	<u>2317</u> Agreed Order granting motion to continue hearing on (related document <u>2226</u> ) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).
05/17/2021	<u>2318</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,). (Hoffman, Juliana)
05/17/2021	<u>2319</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/17/2021	<u>2320</u> Certificate of service re: 1) <i>Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ; and 2) <i>Notice of Change of Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2294</u> Reply to (related document(s): <u>2278</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2297</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for</i>

	<i>Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/18/2021	<u>2321</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). (Annable, Zachery)
05/18/2021	<u>2322</u> Notice of Appearance and Request for Notice <i>for BH Equities LLC</i> by Casey William Doherty Jr. filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	<u>2323</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	<u>2324</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i> ))
05/18/2021	<u>2325</u> Order granting fifth interim fee application for compensation (related document # <u>2221</u> ) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$838751.40, expenses awarded: \$0.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2326</u> Order granting fourth interim application for compensation (related document # <u>1655</u> ) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$710280.45, expenses awarded: \$1479.47 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2327</u> Order granting fifth interim application for compensation (related document # <u>2233</u> ) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1957009.95, expenses awarded: \$23156.48 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2328</u> Application for compensation <i>Sidley Austin LLP's Seventeenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. (Hoffman, Juliana)
05/18/2021	<u>2329</u> Order granting fourth interim application for compensation (related document # <u>1853</u> ) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1620489.60, expenses awarded: \$8974.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2330</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero

	Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
05/18/2021	<u>2331</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73) (Annable, Zachery)
05/18/2021	<u>2360</u> Hearing held on 5/18/2021. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P., (Matter continued) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>2221</u> Application for compensation Fifth Interim Application for Compensation of FTI Consulting, Inc., for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman). (**CNO filed; order signed in chambers**) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>1853</u> Application for compensation Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers**) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>1655</u> Application for compensation Fourth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers**) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>2233</u> Application for compensation Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers**) (Edmond, Michael) (Entered: 05/24/2021)
05/19/2021	<u>2332</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2333</u> Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	

	<u>2334</u> Withdrawal of claim(s): #93 Filed by Interested Party Integrated Financial Associates, Inc.. (Attachments: # <u>1</u> Exhibit Ex. 1 – POC #93 Integrated Financial Associates) (Bryant, M.)
05/19/2021	<u>2335</u> Notice ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2336</u> Amended Witness and Exhibit List <i>for May 21, 2021 Hearing</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2305</u> List (witness/exhibit/generic)). (Sosland, Martin)
05/19/2021	<u>2337</u> Certificate of service re: <i>Documents Served on May 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u> , filed by Debtor Highland Capital Management, L.P., <u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., <u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2315</u> Joinder by <i>to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2311</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/19/2021	<u>2338</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2317</u> Agreed Order granting motion to continue hearing on (related document <u>2226</u> ) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).) No. of Notices: 2. Notice Date 05/19/2021. (Admin.)
05/20/2021	<u>2339</u> Amended Exhibit List <i>Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2314</u> List (witness/exhibit/generic)). (Draper, Douglas)
05/20/2021	<u>2340</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) ( <i>Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/20/2021	<u>2341</u> Response opposed to (related document(s): <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

05/20/2021	<u>2342</u> Amended Exhibit List <i>Supplemental Exhibit List</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2339</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29) (Draper, Douglas)
05/20/2021	<u>2343</u> Joinder by <i>Debtors Opposition to Motion to Compel</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2341</u> Response). (Hoffman, Juliana)
05/20/2021	<u>2344</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2319</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/21/2021	<u>2345</u> Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s) <u>2274</u> Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2274</u> , Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2346</u> Order granting motion to withdraw as attorney for CLO Holdco, LTD (attorney John J. Kane terminated). (related document # <u>2316</u> ) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	<u>2347</u> Reply to (related document(s): <u>2311</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
05/21/2021	<u>2348</u> PDF with attached Audio File. Court Date & Time [05/21/2021 08:57:33 AM]. File Size [ 73177 KB ]. Run Time [ 05:13:15 ]. (admin).
05/21/2021	<u>2349</u> Omnibus Reply to (related document(s): <u>2309</u> Response to show cause order filed by Respondent Mark Patrick, <u>2312</u> Objection filed by Interested Party James Dondero, <u>2313</u> Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/21/2021	<u>2350</u> Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document # <u>2243</u> ) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	<u>2351</u> Declaration re: ( <i>Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 19 # <u>2</u> Exhibit 20 # <u>3</u> Exhibit 21 # <u>4</u> Exhibit 22) (Annable, Zachery)
05/21/2021	<u>2352</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s) <u>2335</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2353</u> Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>2133</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	

	<p><u>2354</u> Order granting motion to continue hearing on (related document # <u>2340</u>) (related documents Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2229, Entered on 5/21/2021. (Okafor, M.)</i>)</p>
05/21/2021	<p><u>2355</u> Declaration re: (<i>Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 19 # <u>2</u> Exhibit 20 # <u>3</u> Exhibit 21 # <u>4</u> Exhibit 22) (Annable, Zachery)</p>
05/21/2021	<p><u>2356</u> Notice (<i>Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
05/21/2021	<p><u>2357</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). (Annable, Zachery)</p>
05/21/2021	<p><u>2358</u> Certificate of service re: <i>Documents Served on May 18, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2321</u> Notice (<i>Notice of Cancellation of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). filed by Debtor Highland Capital Management, L.P., <u>2324</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i>)<u>2325</u> Order granting fifth interim fee application for compensation (related document <u>2221</u>) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$838751.40, expenses awarded: \$0.00 Entered on 5/18/2021. (Okafor, M.), <u>2326</u> Order granting fourth interim application for compensation (related document <u>1655</u>) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$710280.45, expenses awarded: \$1479.47 Entered on 5/18/2021. (Okafor, M.), <u>2327</u> Order granting fifth interim application for compensation (related document <u>2233</u>) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1957009.95, expenses awarded: \$23156.48 Entered on 5/18/2021. (Okafor, M.), <u>2328</u> Application for compensation Sidley Austin LLP's Seventeenth Monthly Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2329</u> Order granting fourth interim application for compensation (related document <u>1853</u>) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1620489.60, expenses awarded: \$8974.00 Entered on 5/18/2021.</p>

	<p>(Okafor, M.), <u>2331</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/21/2021	<p><u>2359</u> Hearing held on 5/21/2021. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 05/24/2021)</p>
05/21/2021	<p><u>2368</u> Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 &amp; #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST &amp; EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO (Edmond, Michael) (Entered: 05/24/2021)</p>
05/24/2021	<p><u>2361</u> Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould &amp; Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)<u>2196</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u>, Entered on 5/24/2021 (Okafor, M.)</p>
05/24/2021	<p><u>2362</u> Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)</p>
05/24/2021	<p><u>2363</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
05/24/2021	<p><u>2364</u> Request for transcript regarding a hearing held on 5/21/2021. The requested turn-around time is daily. (Edmond, Michael)</p>
05/24/2021	<p><u>2365</u> Withdrawal of claim(s): (Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
05/24/2021	

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	<u>2366</u> Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2367</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021.). Hearing to be held on 6/10/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2256</u> , (Draper, Douglas)
05/24/2021	<u>2369</u> Certificate of service re: Notice of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2367</u> Notice of hearing). (Attachments: # <u>1</u> Mailing Matrix) (Draper, Douglas)
05/24/2021	<u>2370</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.). (Hoffman, Juliana)
05/24/2021	<u>2371</u> Certificate of service re: <i>1) Debtor's Notice of Deposition to Mark Patrick in Connection with Debtor's Contempt Motion; 2) Debtor's Notice of Rule 30(b)(6) Deposition to (A) CLO Holdco, Ltd., and (B) Charitable DAF Fund, L.P.; and 3) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2332</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2333</u> Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2335</u> Notice <i>(Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169)</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2021	<u>2372</u> Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	<u>2373</u> Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	<u>2374</u> Certificate of service re: <i>1) Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust; and 3) Joinder of the Official Committee of Unsecured Creditors to Debtors Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 Filed by Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2340</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) <i>(Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2341</u> Response opposed to (related document(s): <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2343</u> Joinder by <i>Debtors Opposition to Motion to Compel</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2341</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

05/26/2021	<p><u>2375</u> Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2359 Hearing held on 5/21/2021. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2021. (Rehling, Kathy)</p>
05/26/2021	<p><u>2376</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Creditor Plano ISD. (Reece, Linda)</p>
05/26/2021	<p><u>2377</u> Declaration re: (<i>Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 23 # <u>2</u> Exhibit 24) (Annable, Zachery)</p>
05/26/2021	<p><u>2378</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). (Annable, Zachery)</p>
05/26/2021	<p><u>2379</u> Certificate of service re: [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] Notice of Transfer of Claim Pursuant to F. R.B.P. 3001(e)(2) or 3001(e)(4) [<i>Re Docket Nos. 2092 2094 and 2096 2115</i>] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2099</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2100</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2101</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2102</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2103</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by</p>

Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2104 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2105 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2106 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2107 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2108 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2109 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2110 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2111 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2112 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2113 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2114 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, 2115 Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC). (Kass, Albert)

05/26/2021

2380 Certificate of service re: *Documents Served on May 21, 2021* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) 2345 Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s) 2274 Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at <https://us-courts.webex.com/meet/jerniga> for 2274, Entered on 5/21/2021 (Okafor, M.), 2349 Omnibus Reply to (related document(s): 2309 Response to show cause order filed by Respondent Mark Patrick, 2312 Objection filed by Interested Party James Dondero, 2313 Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 2350 Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document 2243) Entered on 5/21/2021. (Okafor, M.), 2352 Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s) 2335 Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), 2353 Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s) 2133 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), 2354 Order granting motion to continue hearing on (related document 2340) (related documents Motion to borrow/incure debt (*Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela*) Hearing to be held on 6/25/2021 at 09:30 AM at <https://us-courts.webex.com/meet/jerniga> for 2229, Entered on 5/21/2021. (Okafor, M.), 2355 Declaration re: (*Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders*) filed by Debtor Highland Capital

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	<p><i>Management, L.P. (RE: related document(s)2349 Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) filed by Debtor Highland Capital Management, L.P., 2356 Notice (Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)75 Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., 2357 Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
05/26/2021	<p><u>2381</u> BNC certificate of mailing – PDF document. (RE: related document(s)2362 Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 05/26/2021. (Admin.)</p>
05/27/2021	<p><u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. (Hoffman, Juliana)</p>
05/27/2021	<p><u>2383</u> Application for compensation (<i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i>) for Pachulski Stang Ziehl &amp; Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$1,286,897.00, Expenses: \$8,173.58. Filed by Other Professional Pachulski Stang Ziehl &amp; Jones LLP (Annable, Zachery)</p>
05/27/2021	<p><u>2384</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 38 . Civil Case Number: 3:21–CV–00879–K (RE: related document(s)2149 Notice of appeal <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal.)) (Blanco, J.)</p>
05/27/2021	<p><u>2386</u> Notice of docketing COMPLETE record on appeal. 3:21CV00879K (RE: related document(s)2149 Notice of appeal<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)2149 Notice of appeal.)) (Blanco, J.)</p>
05/27/2021	<p><u>2387</u> Notice of hearing (<i>Status Conference</i>) filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)1888 Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.). Status Conference to be held on 8/4/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a>. (Drawhorn, Lauren)</p>
05/27/2021	<p><u>2388</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s)2365 Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.)</p>
05/27/2021	<p><u>2389</u> Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document # <u>2199</u>) Entered on 5/27/2021. (Okafor, M.)</p>

05/27/2021	<u>2390</u> Certificate of service re: <i>Documents Served on May 24, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2361</u> Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s) <u>2196</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , Entered on 5/24/2021 (Okafor, M.), <u>2363</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2365</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2366</u> Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/27/2021	<u>2391</u> Certificate of service re: <i>1) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion; and 2) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2372</u> Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2373</u> Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	<u>2392</u> Withdrawal / <i>Notice of Withdrawal of Appearance</i> filed by Interested Party NexBank (RE: related document(s) <u>923</u> Notice of appearance and request for notice). (Slade, Jared)
06/01/2021	<u>2393</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , (Annable, Zachery)
06/01/2021	<u>2394</u> Certificate of service re: <i>1) Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 2) Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2377</u> Declaration re: ( <i>Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., <u>2378</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	<u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/01/2021	<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. (Hoffman, Juliana)
06/02/2021	<u>2397</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2283</u> Application for compensation ( <i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for</i>

	<i>the Period from October 1, 2020 through November 30, 2020)</i> for Hayward PLLC, Debtor's Attorney,). (Annable, Zachery)
06/02/2021	<u>2398</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). Appellant Designation due by 06/16/2021. (Draper, Douglas)
06/02/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcap] ( 298.00). Receipt number 28754649, amount \$ 298.00 (re: Doc# <u>2398</u> ). (U.S. Treasury)
06/02/2021	<u>2399</u> Certificate of service re: <i>Documents Served on May 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2383</u> Application for compensation ( <i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i> ) for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$1,286,897.00, Expenses: \$8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP, <u>2388</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s) <u>2365</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.), <u>2389</u> Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document <u>2199</u> ) Entered on 5/27/2021. (Okafor, M.)). (Kass, Albert)
06/02/2021	<u>2466</u> Circuit Court Order granting motions for certification to court of appeals (Related Doc # <u>2033</u> ) Entered on 6/2/2021. IT IS ORDERED that the motion of Highland Global AllocationFund, Highland Income Fund, NexPoint Capital, Incorporated, and NexPoint Strategic Opportunities Fund for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of James Dondero forleave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of Get Good Trust andThe Dugaboy Investment Trust for leave to appeal under 28 U.S.C. § 158(d)is GRANTED. USCA Circuit Court Case: 21-10449 (Whitaker, Sheniqua) (Entered: 06/21/2021)
06/03/2021	<u>2400</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
06/03/2021	<u>2401</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/03/2021	<u>2402</u> Certificate of service re: 1) <i>Amended Notice of Hearing</i> ; and 2) <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2393</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to</i>

	<p>(A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u>, filed by Debtor Highland Capital Management, L.P., <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/04/2021	<p><u>2403</u> Objection to (related document(s): <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat filed by Debtor Highland Capital Management, L.P.)Preliminary Objection filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)</p>
06/04/2021	<p><u>2404</u> Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). (Annable, Zachery)</p>
06/04/2021	<p><u>2405</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2395</u>. (Annable, Zachery)</p>
06/04/2021	<p><u>2406</u> Response opposed to (related document(s): <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Howell, William)</p>
06/04/2021	<p><u>2407</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u>) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2255</u> and for <u>2248</u> and for <u>2304</u>. (Annable, Zachery)</p>
06/04/2021	<p><u>2408</u> Certificate of service re: (Supplemental) 1) Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u>, filed by Debtor Highland Capital</p>

	<p>Management, L.P., <u>2337</u> Certificate of service re: <i>Documents Served on May 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u>, filed by Debtor Highland Capital Management, L.P., <u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., <u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2315</u> Joinder by to <i>Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2311</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
06/04/2021	<p><u>2409</u> Certificate of service re: <i>Eighteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2021 Through April 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
06/05/2021	<p><u>2410</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2255</u> Order on motion to show cause). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53) (Annable, Zachery)</p>
06/05/2021	<p><u>2411</u> Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P., Respondent Mark Patrick (RE: related document(s)<u>2255</u> Order on motion to show cause). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39</p>

	# <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43) (Phillips, Louis)
06/05/2021	<u>2412</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery)
06/06/2021	<u>2414</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). Appellant Designation due by 06/16/2021.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
06/06/2021	<u>2415</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/06/2021	<u>2416</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01295-X. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/07/2021	<u>2417</u> Notice ( <i>Notice of Proposed Order</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
06/07/2021	<u>2418</u> Declaration re: ( <i>Declaration of Jeffrey N. Pomerantz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2417</u> Notice (generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
06/07/2021	<u>2419</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2412</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 16 # <u>2</u> Exhibit 17) (Annable, Zachery)
06/07/2021	<u>2420</u> Amended Witness and Exhibit List <i>Exhibits 44, 45, 46</i> filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2411</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 44 # <u>2</u> Exhibit 45 # <u>3</u> Exhibit 46) (Sbaiti, Mazin)
06/07/2021	<u>2421</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2410</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 54 # <u>2</u> Exhibit 55) (Annable, Zachery)
06/08/2021	<u>2422</u> Request for transcript regarding a hearing held on 6/8/2021. The requested turn-around time is hourly. (Edmond, Michael)
06/08/2021	<u>2423</u> Amended Witness and Exhibit List ( <i>Second Amended</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2419</u> List (witness/exhibit/generic)). (Hayward, Melissa)
06/08/2021	<u>2424</u> Reply to (related document(s): <u>2341</u> Response filed by Debtor Highland Capital Management, L.P.) <i>Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit 1) (Draper, Douglas)

06/08/2021	<u>2425</u> Certificate of service re: Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2424</u> Reply). (Draper, Douglas)
06/08/2021	<u>2426</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional ). (Hoffman, Juliana)
06/08/2021	<u>2427</u> Certificate of service re: [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
06/08/2021	<u>2428</u> Certificate of service re: 1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 Through March 31, 2021; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2400</u> Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2401</u> Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/08/2021	<u>2430</u> Hearing held on 6/8/2021. (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.) (Edmond, Michael)
06/08/2021	<u>2431</u> Hearing held on 6/8/2021. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90-day continuance without prejudice. Counsel to upload order.) (Edmond, Michael)
06/08/2021	<u>2519</u> Court admitted exhibits date of hearing June 8, 2021 (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on

	6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (COURT ADMITTED DEBTOR'S EXHIBIT'S #12 THROUGH #55 THAT APPEAR AT DOC. #2410 BY JOHN MORRIS; (NOTE* EXHIBIT'S #1 THROUGH #11 WERE NOT ADMITTED) & THE COURT ADMITTED DEFENDANT'S EXHIBIT'S #1, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, & #30 THROUGH #44 ALL ADMITTED BY LOUIS PHILLIPS; (NOTE* EXHIBIT'S #13, #14 & #29 WERE NOT ADMITTED) (Edmond, Michael) Modified on 10/22/2021 (Edmond, Michael). (Entered: 07/02/2021)
06/09/2021	<u>2432</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 54 . Civil Case Number: 3:21-CV-00538-N (RE: related document(s) <u>1957</u> Notice of appeal ) (Blanco, J.)
06/09/2021	<u>2433</u> Notice of docketing record on appeal. 3:21-cv-00538-N (RE: related document(s) <u>1957</u> Notice of appeal ) (Blanco, J.)
06/09/2021	<u>2434</u> Certificate of service re: <i>1) Disclosure Declaration of Ordinary Course Professional; 2) Notice of Hearing; and 3) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2404</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>2405</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2395</u> , filed by Debtor Highland Capital Management, L.P., <u>2407</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2255</u> and for <u>2248</u> and for <u>2304</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2435</u> Certificate of service re: <i>1) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021; and 2) Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2410</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2255</u> Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) filed by Debtor Highland Capital Management, L.P., <u>2412</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit

	3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2436</u> Certificate of service re: <i>Documents Served on June 7, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2417</u> Notice ( <i>Notice of Proposed Order</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2418</u> Declaration re: ( <i>Declaration of Jeffrey N. Pomerantz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2417</u> Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>2419</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2412</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) filed by Debtor Highland Capital Management, L.P., <u>2421</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2410</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2437</u> Certificate of service re: <i>Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2423</u> Amended Witness and Exhibit List ( <i>Second Amended</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2419</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2438</u> BNC certificate of mailing. (RE: related document(s) <u>2415</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy.) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)
06/10/2021	<u>2439</u> Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2248</u> , (Sbaiti, Mazin)
06/10/2021	<u>2440</u> Transcript regarding Hearing Held 06/08/2021 (298 pages) RE: Show Cause Hearing (2255); Motion to Modify Order (2248); Motion to Extend Time (2304). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/8/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2430 Hearing held on 6/8/2021. (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.), <u>2431</u> Hearing held on 6/8/2021. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for

	UCC. Nonevidentiary hearing. Court granted 90–day continuance without prejudice. Counsel to upload order.)). Transcript to be made available to the public on 09/8/2021. (Rehling, Kathy)
06/10/2021	<u>2441</u> Agreed Motion to continue hearing on (related documents <u>2248</u> Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # <u>1</u> Proposed Order) (Sbaiti, Mazin)
06/10/2021	<u>2442</u> Hearing held on 6/10/2021. (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero–related entities for clarification of their standing.) (Edmond, Michael) (Entered: 06/11/2021)
06/11/2021	Receipt Number 338903, Fee Amount \$207.00 – Filing Fee for Direct Appeal to Fifth Circuit Court of Appeals paid by K&L Gates LLP (RE: related document(s) <u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.) (Floyd, K)
06/11/2021	<u>2443</u> Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document # <u>2306</u> ) Entered on 6/11/2021. (Okafor, M.)
06/11/2021	<u>2444</u> Request for transcript regarding a hearing held on 6/10/2021. The requested turn–around time is hourly. (Edmond, Michael)
06/12/2021	<u>2445</u> Transcript regarding Hearing Held 06/10/2021 (91 pages) RE: Motion to Compel Compliance (2256). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>2442</u> Hearing held on 6/10/2021. (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero–related entities for clarification of their standing.)). Transcript to be made available to the public on 09/10/2021. (Rehling, Kathy)
06/14/2021	Receipt Number 338904, Fee Amount \$207.00 – Filing fee for Direct Appeal to Fifth Circuit Court of Appeals paid by Heller, Draper, Patrick, Horn & Dabney, LLC (Fifth Circuit Docket No. 21–10449) (RE: related document(s) <u>2014</u> Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust.(RE: related document(s) <u>1943</u> Order confirming chapter 11 plan)).
06/14/2021	

	<u>2446</u> Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2248</u> , (Sbaiti, Mazin)
06/14/2021	<u>2447</u> Notice to take deposition of Trussway Industries, LLC filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/14/2021	<u>2448</u> Notice to take deposition of Highland Capital Management, LP filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/15/2021	<u>2449</u> Certificate of service re: <i>Order Pursuant to Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors Effective April 15, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2443</u> Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document <u>2306</u> ) Entered on 6/11/2021. (Okafor, M.)). (Kass, Albert)
06/15/2021	<u>2450</u> Certificate of service re: <i>(Supplemental) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2427</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/16/2021	<u>2451</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Draper, Douglas)
06/16/2021	<u>2452</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2398</u> Notice of appeal, <u>2451</u> Statement of issues on appeal). Appellee designation due by 06/30/2021. (Draper, Douglas)
06/16/2021	<u>2453</u> Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:# <u>2304</u> Motion to extend time.) Entered on 6/16/2021. (Okafor, M.)
06/16/2021	<u>2454</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2421</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 23 # <u>2</u> Exhibit 24) (Annable, Zachery)
06/16/2021	<u>2455</u> Support/supplemental document ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay</i>

	<i>Related Fees and Expenses, and (II) Granting Rela). (Annable, Zachery)</i>
06/16/2021	<u>2456</u> Order granting unopposed emergency motion to continue hearing on (related document # <u>2441</u> ) (related documents Motion to Reconsider(related documents <u>854</u> Order on application to employ)) Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2248</u> , Entered on 6/16/2021. (Okafor, M.)
06/17/2021	<u>2457</u> Clerk's correspondence requesting exhibits from attorney for appellant. (RE: related document(s) <u>2452</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2398</u> Notice of appeal, <u>2451</u> Statement of issues on appeal). Appellee designation due by 06/30/2021.) Responses due by 6/21/2021. (Blanco, J.)
06/17/2021	<u>2458</u> Order requiring a trustee of The Dugaboy Investment Trust and the The Get Good Trust to appear at all hearings in the bankruptcy case and adversary cases in which they take positions. Entered on 6/17/2021 (Okafor, M.)
06/17/2021	<u>2459</u> Motion for leave to Amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document(s) <u>2452</u> Appellant designation) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
06/18/2021	<u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition . Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages); <sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)
06/18/2021	<u>2461</u> Application for compensation ( <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC (Annable, Zachery)
06/18/2021	<u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Objection to claim). (Annable, Zachery)
06/21/2021	<u>2465</u> Certificate of service re: 1) <i>Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> ; 2) <i>Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> ; and 3) <i>Notice of Final Term Sheet</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2453</u> Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document: <u>2304</u> Motion to extend time.) Entered on 6/16/2021. (Okafor, M.), <u>2454</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2421</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., <u>2455</u> Support/supplemental document ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Rela</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

06/21/2021	<u>2467</u> Supplemental Objection to (related document(s): <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relata</i> filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/21/2021	<u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)
06/22/2021	<u>2469</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>2280</u> Motion to file document under seal. <i>Appendix in Support of Response to Motion to Disqualify</i> Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Appendix)) Responses due by 6/29/2021. (Ecker, C.)
06/22/2021	<u>2470</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2383</u> Application for compensation ( <i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i> ) for Pachulsk). (Pomerantz, Jeffrey)
06/22/2021	<u>2471</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0.). (Hoffman, Juliana)
06/22/2021	<u>2472</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery)
06/22/2021	<u>2473</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relata</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
06/23/2021	<u>2474</u> Order granting motion for leave to amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document # <u>2459</u> ) Entered on 6/23/2021. (Okafor, M.)
06/23/2021	<u>2475</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relata</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4A # <u>5</u> Exhibit 4B # <u>6</u> Exhibit 5 # <u>7</u> Exhibit 6 # <u>8</u> Exhibit 7 # <u>9</u> Exhibit 8 # <u>10</u> Exhibit 9 # <u>11</u> Exhibit 10) (Draper, Douglas)
06/23/2021	<u>2476</u> Reply to (related document(s): <u>2403</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2467</u> Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Annable, Zachery). Related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relata</i> filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.).

06/23/2021	<u>2477</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2473</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 5 # <u>3</u> Exhibit 6 # <u>4</u> Exhibit 7 # <u>5</u> Exhibit 8) (Annable, Zachery)
06/23/2021	<u>2478</u> Certificate of service re: <i>1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), <u>2461</u> Application for compensation ( <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/23/2021	<u>2479</u> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). (Kass, Albert)
06/24/2021	<u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. (Pomerantz, Jeffrey)
06/24/2021	<u>2481</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2480</u> , (Pomerantz, Jeffrey)
06/24/2021	<u>2482</u> Declaration re: ( <i>Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> ). (Annable, Zachery)

06/25/2021	<p><u>2483</u> Certificate of service re: 1) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtors Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtors Chief Executive Officer and Chief Restructuring Officer;</i> and 2) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2472</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2395</u> Motion to pay (<i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital Management, L.P., <u>2473</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i>). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2021	<p><u>2484</u> Certificate of service re: 1) <i>Debtor's Reply in Support of Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief;</i> and 2) <i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2476</u> Reply to (related document(s): <u>2403</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2467</u> Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) <u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2477</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2473</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2021	<p><u>2485</u> Amended U.S. Trustee's appointment of committee of <i>Unsecured Creditors</i> (Lambert, Lisa)</p>
06/25/2021	<p><u>2486</u> Certificate of service re: U.S. Trustee's Amended Appointment of Committee of Unsecured Creditors filed by U.S. Trustee United States Trustee (RE: related document(s)<u>2485</u> UST appointment of committee). (Lambert, Lisa)</p>
06/25/2021	<p><u>2487</u> Hearing held on 6/25/2021. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)</p>
06/25/2021	<p><u>2488</u> INCORRECT ENTRY (corrected by DE 2490) Hearing held on 6/25/2021. (RE: related document(s)<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee.</p>

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	Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael) Modified on 6/29/2021 (Ellison, T.).
06/25/2021	2489 Hearing held on 6/25/2021. (RE: related document(s) <a href="#">2395</a> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2490 Hearing held on 6/25/2021. (RE: related document(s) <a href="#">2248</a> Motion to Reconsider(related documents <a href="#">854</a> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.) (Edmond, Michael)
06/25/2021	<a href="#">2491</a> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B) (Annable, Zachery)
06/25/2021	<a href="#">2492</a> Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) <a href="#">2229</a> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., <a href="#">2248</a> Motion to Reconsider(related documents <a href="#">854</a> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.), <a href="#">2395</a> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPEARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THOROUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
06/28/2021	<a href="#">2493</a> Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
06/28/2021	Receipt Number 338916, Fee Amount \$207.00 for Direct Appeal to the Fifth Circuit Court of Appeals (Reference 21-90011 and 21-10449) (RE: related document(s) <a href="#">1970</a> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # <a href="#">1</a> Exhibit)) (Floyd, K)
06/28/2021	<a href="#">2494</a> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <a href="#">2248</a> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)

06/28/2021	<p><u>2495</u> Notice (<i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s)<u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)</p>
06/28/2021	<p><u>2496</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2491</u>, (Annable, Zachery)</p>
06/29/2021	<p><u>2497</u> Request for transcript regarding a(ENTIRE) hearing held on 6/25/2021. The requested turn-around time is hourly (Jeng, Hawaii)</p>
06/29/2021	<p><u>2498</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$2). (Hoffman, Juliana)</p>
06/29/2021	<p><u>2499</u> Certificate of service re: 1) <i>Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021</i>; 2) <i>Notice of Hearing on Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021</i>; and 3) <i>Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. filed by Debtor Highland Capital Management, L.P., <u>2481</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2480</u>, filed by Debtor Highland Capital Management, L.P., <u>2482</u> Declaration re: (<i>Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/30/2021	

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	<p><u>2500</u> Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s)2248 Motion to Reconsider(related documents 854 Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>
06/30/2021	<p><u>2501</u> Transcript regarding Hearing Held 06/25/2021 (79 pages) (Excerpt 1: Proceedings from 9:36 am to 11:25 am) RE: Motion to Borrow (2229) and Motion to Pay Restructuring Fee (2395). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2487 Hearing held on 6/25/2021. (RE: related document(s)2229 Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.), 2489 Hearing held on 6/25/2021. (RE: related document(s)2395 Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)</p>
06/30/2021	<p><u>2502</u> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$1,603,754.00, Expenses: \$28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. (Pomerantz, Jeffrey)</p>
06/30/2021	<p><u>2503</u> Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document # <u>2229</u>) Entered on 6/30/2021. (Okafor, M.)</p>
06/30/2021	<p><u>2504</u> Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document # <u>2395</u>) Entered on 6/30/2021. (Okafor, M.)</p>
06/30/2021	<p><u>2505</u> Order granting motion to seal appendix (related document # <u>2280</u>) Entered on 6/30/2021. (Okafor, M.)</p>
06/30/2021	<p><u>2506</u> Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document # <u>2248</u>) Entered on 6/30/2021. (Okafor, M.)</p>

06/30/2021	<u>2507</u> Notice ( <i>Third Notice of Additional Services Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Annable, Zachery)
06/30/2021	<u>2508</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/30/2021	<u>2509</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief</i> ) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	<u>2510</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2480</u> , (Annable, Zachery)
07/01/2021	<u>2511</u> Certificate of service re: <i>1) Order Requiring Post-Hearing Submissions; 2) Notice of Filing of Second Amended and Restated Investment Advisory Agreement; and 3) Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.), <u>2495</u> Notice ( <i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2496</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2491</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	<u>2512</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2328</u> Application for compensation <i>Sidley Austin LLP's Seventeenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 3/31/2021, Fee:

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	\$371,842.20, Expenses: \$). (Hoffman, Juliana)
07/02/2021	<u>2513</u> Notice of appeal . Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). Appellant Designation due by 07/16/2021. (Sbaiti, Mazin)
07/02/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28822100, amount \$ 298.00 (re: Doc# <u>2513</u> ). (U.S. Treasury)
07/02/2021	<u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. (Hoffman, Juliana)
07/02/2021	<u>2515</u> Notice ( <i>Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2021	<u>2516</u> Declaration re: ( <i>Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
07/02/2021	<u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
07/02/2021	<u>2518</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause)). (Attachments: # <u>1</u> Exhibit 56) (Annable, Zachery)
07/06/2021	<u>2520</u> Withdrawal of claim(s) Claim has been satisfied. Claim: 194 Filed by Creditor Crescent TC Investors, L.P.. (Held, Michael)
07/06/2021	<u>2522</u> Notice of transmittal of appellee supplemental record vol. 1 3:21-CV-00261-L (RE: related document(s) <u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	<u>2523</u> Notice of transmittal SEALED DOCUMENTS 3;21-cv00261 (RE: related document(s) <u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)

07/06/2021	<p><u>2524</u> Certificate of service re: <i>Documents Served on June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2502</u> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$1,603,754.00, Expenses: \$28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. filed by Debtor Highland Capital Management, L.P., <u>2503</u> Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document <u>2229</u>) Entered on 6/30/2021. (Okafor, M.), <u>2504</u> Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document <u>2395</u>) Entered on 6/30/2021. (Okafor, M.), <u>2506</u> Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document <u>2248</u>) Entered on 6/30/2021. (Okafor, M.), <u>2507</u> Notice (<i>Third Notice of Additional Services Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2508</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/06/2021	<p><u>2525</u> Certificate of service re: <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2510</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2480</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/06/2021	<p><u>2526</u> Application for compensation <i>Sidley Austin LLP's Nineteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. (Hoffman, Juliana)</p>
07/07/2021	<p><u>2527</u> Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document # <u>2517</u>) Entered on 7/7/2021. (Okafor, M.)</p>
07/08/2021	<p><u>2530</u> Certificate of mailing regarding appeal (RE: related document(s)<u>2513</u> Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)<u>2506</u> Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)</p>
07/08/2021	<p><u>2531</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>2513</u> Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s)<u>2506</u> Order on motion to reconsider). (Whitaker, Sheniqua)</p>

07/08/2021	<u>2532</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) <u>2513</u> Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	<u>2533</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
07/08/2021	<u>2534</u> Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2494</u> Order (generic)). (Attachments: # <u>1</u> Exhibit 1_June 8, 2021 Hearing Transcript Excerpts # <u>2</u> Exhibit 2_June 25, 2021 Hearing Transcript Excerpts # <u>3</u> Exhibit 3_Subscription and Transfer Agreement # <u>4</u> Exhibit 4_Members Agreement) (Sbaiti, Mazin)
07/08/2021	<u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
07/08/2021	<u>2536</u> Certificate of service re: <i>Documents Served on July 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2515</u> Notice ( <i>Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2516</u> Declaration re: ( <i>Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2518</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause)). (Attachments: # 1 Exhibit 56) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2021	<u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit D # <u>3</u> Exhibit E) (Annable, Zachery)

07/08/2021	Receipt of filing fee for Motion to Sell(19-34054-sgj11) [motion,msell] ( 188.00). Receipt number 28834907, amount \$ 188.00 (re: Doc# <u>2537</u> ). (U.S. Treasury)
07/08/2021	<u>2538</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/09/2021	<u>2539</u> Notice and Disclosures of Funds Pursuant to Court's Sua Sponte Order filed by Interested Parties Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.). (Hogewood, A.)
07/09/2021	<u>2540</u> Support/supplemental document ( <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> ). (Annable, Zachery)
07/09/2021	<u>2541</u> Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.). (Draper, Douglas)
07/09/2021	<u>2542</u> Notice of Disclosures filed by Creditor Get Good Trust (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.). (Draper, Douglas)
07/09/2021	

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	<p><u>2543</u> Notice (<i>Advisors' Disclosures in Response to Sua Sponte Order</i>) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Rukavina, Davor)</p>
07/09/2021	<p><u>2544</u> Notice and Disclosures of NexPoint RE Entities and HMCS Inc. in Response to Sua Sponte Order filed by Creditor Highland Capital Management Services, Inc., Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A) (Drawhorn, Lauren)</p>
07/09/2021	<p><u>2545</u> Amended Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2546</u> Amended Notice of Disclosures filed by Creditor Get Good Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2547</u> Notice of Response and Disclosures related to sua sponte Order Requiring Disclosures filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)<u>2460</u> Order Requiring Disclosures</p>

(RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation – CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registry– CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership – DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination – HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTATION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination – HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25 Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution – DAF Holdco # 29 Exhibit 29.April 2 Resolution – CLO HoldCo # 30 Exhibit 30.Written Resolution – Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012–2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo – Register of Directors # 37 Exhibit 37.DAF Holdco – Register of Directors # 38 Exhibit 38.Register of Directors – Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register – Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors – MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register – MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors – HCT Holdco 2 – Ltd. # 43 Exhibit 43.Share Register – HCT Holdco 2, Ltd.) (Phillips, Louis)

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2548 Certificate of service re: *(Supplemental) 1) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims; and 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2464 Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2059 Objection to claim). filed by Debtor Highland Capital Management, L.P., 2468 First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)2059 Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), 2478 Certificate of service re: *1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2460 Order Requiring Disclosures (RE: related document(s)3 Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), 2461 Application for compensation (*Twelfth Monthly Application for Compensation and*

	<p><i>Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2479</u> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
07/09/2021	<p><u>2549</u> Amended Notice <i>Second Amended Response of Dugaboy Investment Trust to Order Requiring Disclosures</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2541</u> Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)), <u>2545</u> Amended Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2550</u> Certificate of service re: <i>Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2526</u> Application for compensation <i>Sidley Austin LLP's Nineteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/12/2021	<p><u>2551</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2537</u> and for <u>2535</u>, (Annable, Zachery)</p>

07/12/2021	<u>2552</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2461</u> Application for compensation ( <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> ) for Hayward PLLC, Debtor). (Annable, Zachery)
07/12/2021	<u>2553</u> Amended appellant designation of contents for inclusion in record on appeal pursuant to Fed. R. Bankr. P. 8009 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2452</u> Appellant designation). (Draper, Douglas)
07/12/2021	<u>2554</u> Application for compensation ( <i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$83,450.00, Expenses: \$5,939.09. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/12/2021	<u>2555</u> Certificate of service re: <i>Order Granting Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2527</u> Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document <u>2517</u> ) Entered on 7/7/2021. (Okafor, M.)). (Kass, Albert)
07/12/2021	<u>2556</u> Notice of Filing of Supplement and Additional Exhibits filed by Interested Parties CLO Holdco, Ltd., Highland Dallas Foundation, Inc., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2547</u> Notice of Response and Disclosures related to sua sponte Order Requiring Disclosures filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages); <sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation – CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registry– CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership – DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination – HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTATION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination – HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25 Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution – DAF Holdco # 29 Exhibit 29.April 2 Resolution – CLO HoldCo # 30 Exhibit 30.Written Resolution – Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012–2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo – Register of Directors # 37 Exhibit 37.DAF Holdco – Register of Directors # 38 Exhibit 38.Register of Directors – Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register – Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors – MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register –

	MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors – HCT Holdco 2 – Ltd. # 43 Exhibit 43.Share Register – HCT Holdco 2, Ltd.)). (Attachments: # <u>1</u> Supplement # <u>2</u> Exhibit 19. Letter From The Dallas Foundation # <u>3</u> Exhibit Exhibit 44. Baltimore Sun Article re: Nonprofit Offshore Structures) (Phillips, Louis)
07/13/2021	<u>2558</u> Certificate of service re: <i>Documents Served on or Before July 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2533</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit D # <u>3</u> Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>2538</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	<u>2559</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/14/2021	<u>2560</u> PDF with attached Audio File. Court Date & Time [05/18/2021 09:37:03 AM]. File Size [ 4798 KB ]. Run Time [ 00:20:29 ]. (admin).
07/14/2021	<u>2561</u> PDF with attached Audio File. Court Date & Time [06/08/2021 02:03:12 PM]. File Size [ 26321 KB ]. Run Time [ 01:52:35 ]. (admin).
07/14/2021	<u>2562</u> PDF with attached Audio File. Court Date & Time [06/08/2021 04:04:27 PM]. File Size [ 27205 KB ]. Run Time [ 01:56:13 ]. (admin).
07/14/2021	<u>2563</u> Objection to (related document(s): <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust. (Taylor, Clay)
07/14/2021	<u>2564</u> PDF with attached Audio File. Court Date & Time [06/08/2021 09:34:21 AM]. File Size [ 26132 KB ]. Run Time [ 01:51:38 ]. (admin).

07/14/2021	<u>2565</u> PDF with attached Audio File. Court Date & Time [06/08/2021 11:30:55 AM]. File Size [ 23135 KB ]. Run Time [ 01:38:51 ]. (admin).
07/14/2021	<u>2566</u> PDF with attached Audio File. Court Date & Time [06/10/2021 09:44:23 AM]. File Size [ 31458 KB ]. Run Time [ 02:14:19 ]. (admin).
07/14/2021	<u>2567</u> PDF with attached Audio File. Court Date & Time [06/25/2021 08:48:05 AM]. File Size [ 77915 KB ]. Run Time [ 05:33:38 ]. (admin).
07/14/2021	<u>2568</u> Certificate of service re: <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2540</u> Support/supplemental document ( <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	<u>2569</u> Certificate of service re: ( <i>Supplemental</i> ) 1) <i>Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief</i> ; and 2) <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2540</u> Support/supplemental document ( <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> ). filed by Debtor Highland Capital Management, L.P., <u>2558</u> Certificate of service re: <i>Documents Served on or Before July 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2533</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> <i>Order granting application to employ Development Specialists, Inc. as Other Professional</i> (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>2538</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2568</u> Certificate of service re: <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry</i>

	<i>of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)2540 Support/supplemental document (Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2535 Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</i>
07/14/2021	<u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. (Hoffman, Juliana)</i>
07/15/2021	<u>2571</u> Response opposed to (related document(s): <u>2534</u> Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2021	<u>2572</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
07/15/2021	<u>2573</u> Certificate of service re: <i>1) Notice of Hearing; and 2) Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2551</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2537</u> and for <u>2535</u> , filed by Debtor Highland Capital Management, L.P., <u>2554</u> Application for compensation ( <i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$83,450.00, Expenses: \$5,939.09. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
07/16/2021	<u>2574</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30.</i> ). (Pomerantz, Jeffrey)
07/16/2021	<u>2575</u> Witness and Exhibit List filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> )). (Attachments: # <u>1</u>

	Objectors Ex. A # <u>2</u> Objectors Ex. B # <u>3</u> Objectors Ex. C # <u>4</u> Objectors Ex. D # <u>5</u> Objectors Ex. E # <u>6</u> Objectors Ex. F # <u>7</u> Objectors Ex. G # <u>8</u> Objectors Ex. H # <u>9</u> Objectors Ex. I # <u>10</u> Objectors Ex. J # <u>11</u> Objectors Ex. K # <u>12</u> Objectors Ex. L # <u>13</u> Objectors Ex. M # <u>14</u> Objectors Ex. N # <u>15</u> Objectors Ex. O) (Taylor, Clay)
07/16/2021	<u>2576</u> Reply to (related document(s): <u>2563</u> Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) ( <i>Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2021	<u>2577</u> Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2576</u> Reply). (Hoffman, Juliana)
07/16/2021	<u>2578</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021. (Sbaiti, Mazin)
07/16/2021	<u>2579</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2559</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2021	<u>2580</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>2578</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021.) Responses due by 7/21/2021. (Blanco, J.)
07/19/2021	<u>2581</u> PDF with attached Audio File. Court Date & Time [07/19/2021 09:30:44 AM]. File Size [ 19741 KB ]. Run Time [ 01:24:28 ]. (admin).
07/19/2021	<u>2582</u> Court admitted exhibits date of hearing July 19, 2021 (RE: related document(s) <u>2491</u> Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED PLAINTIFF'S/DEBTOR'S EXHIBITS #1, #2, #3, #4, #5 & #6 BY JOHN MORRIS AND DEFENDANT/RESPONDENT EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N & #O BY DAVOR RUKAVINA) (Edmond, Michael)
07/19/2021	<u>2583</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2480</u> Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J.

	Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	<u>2584</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2491</u> Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	<u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Hoffman, Juliana)
07/19/2021	<u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
07/19/2021	<u>2587</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2578</u> Appellant designation). (Sbaiti, Mazin)
07/20/2021	<u>2588</u> Order granting fourth interim application for compensation (related document # <u>2480</u> ) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP , fees awarded: \$7527021.50, expenses awarded: \$80299.92 Entered on 7/20/2021. (Okafor, M.)
07/20/2021	<u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
07/20/2021	<u>2590</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendan). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement) (Annable, Zachery)
07/20/2021	<u>2592</u> Notice of docketing APPELLANT SUPPLEMENTAL record on appeal. 3:21-CV-00879-K (RE: related document(s) <u>2149</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) (Blanco, J.)
07/20/2021	<u>2593</u> Request for transcript regarding a hearing held on 7/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
07/20/2021	<u>2594</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic

	<p>Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2589</u>, (Annable, Zachery)</p>
07/20/2021	<p><u>2595</u> Application for compensation (<i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$55,885.00, Expenses: \$3,218.35. Filed by Other Professional Hayward PLLC (Annable, Zachery)</p>
07/20/2021	<p><u>2596</u> Declaration re: (<i>Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). (Annable, Zachery)</p>
07/20/2021	<p><u>2597</u> Certificate of service re: 1) <i>Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021</i>; 2) <i>Debtor's Reply to Plaintiffs' Post-Hearing Brief Regarding Motion for Modification of Order</i>; and 3) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on July 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2571</u> Response opposed to (related document(s): <u>2534</u> Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2572</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/21/2021	<p><u>2598</u> Transcript regarding Hearing Held 07/19/2021 (59 pages) RE: Debtor's Motion for Entry of Order Authorizing Creation of Indemnity Sub-Trust (2491); Pachulski Stang Fourth Interim Fee Application (2480). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, <a href="mailto:kathyrehlingtranscripts@gmail.com">kathyrehlingtranscripts@gmail.com</a>, Telephone number 972-786-3063. (RE: related document(s) 2583 Hearing held on 7/19/2021. (RE: related document(s)<u>2480</u> Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 2584 Hearing held on 7/19/2021. (RE: related document(s)<u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related</i></p>

	Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 10/19/2021. (Rehling, Kathy)
07/21/2021	<u>2599</u> Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document # <u>2491</u> ) Entered on 7/21/2021. (Okafor, M.)
07/21/2021	<u>2600</u> Certificate of service re: <i>1) Debtor's Reply in Support of Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief; and 2) The Official Committee of Unsecured Creditors' Response and Joinder to the Debtor's Response to the Objection to Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2576</u> Reply to (related document(s): <u>2563</u> Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) ( <i>Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2577</u> Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2576</u> Reply). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/22/2021	<u>2601</u> Certificate of service re: <i>1) Sixth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021; and 2) First Consolidated Monthly Fee Application of Teneo Capital, LLC as Litigation Advisor for the Official Committee of Unsecured Creditors for the Period from April 15, 2021 to and Including June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/22/2021	<u>2602</u> Certificate of service re: ( <i>Supplemental</i> ) <i>1) Debtor's Third Omnibus Objection to Certain No Liability Claims; 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2091</u> Certificate of service re: <i>Debtor's Third</i>

	<p><i>Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2059</a> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC, <a href="#">2464</a> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No–Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2059</a> Objection to claim). filed by Debtor Highland Capital Management, L.P., <a href="#">2468</a> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<a href="#">2059</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), <a href="#">2478</a> Certificate of service re: 1) <i>Order Requiring Disclosures</i>; 2) <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020</i>; and 3) <i>Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2460</a> Order Requiring Disclosures (RE: related document(s)<a href="#">3</a> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non–Debtor Dondero–Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non–Debtor Dondero–Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), <a href="#">2461</a> Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <a href="#">2464</a> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No–Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2059</a> Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <a href="#">2479</a> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2468</a> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<a href="#">2059</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
07/23/2021	<p><a href="#">2603</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2502</a> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021.). (Pomerantz, Jeffrey)</p>
07/23/2021	<p><a href="#">2604</a> Order granting motion to seal exhibits (related document # <a href="#">2538</a>) Entered on 7/23/2021. (Okafor, M.)</p>
07/23/2021	<p><a href="#">2605</a> Certificate of service re: <i>Documents Served on July 20, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2588</a> Order granting fourth interim</p>

	<p>application for compensation (related document <a href="#">2480</a>) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl &amp; Jones LLP, fees awarded: \$7527021.50, expenses awarded: \$80299.92 Entered on 7/20/2021. (Okafor, M.), <a href="#">2589</a> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <a href="#">2590</a> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2589</a> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendan). (Attachments: # 1 Exhibit 1—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <a href="#">2594</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2589</a> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">2589</a>, filed by Debtor Highland Capital Management, L.P., <a href="#">2595</a> Application for compensation (<i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$55,885.00, Expenses: \$3,218.35. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <a href="#">2596</a> Declaration re: (<i>Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">604</a> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2021	<p><a href="#">2606</a> Certificate of service re: <i>Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2599</a> Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document <a href="#">2491</a>) Entered on 7/21/2021. (Okafor, M.)). (Kass, Albert)</p>
07/26/2021	<p><a href="#">2607</a> Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2345</a> Order to set hearing). (Annable, Zachery)</p>
07/26/2021	<p><a href="#">2608</a> Notice to take deposition of Wick Phillips Gould &amp; Martin, LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
07/27/2021	<p><a href="#">2609</a> Application for compensation (<i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: \$11,549.20, Expenses: \$0.00. Filed by Other</p>

	Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	<u>2610</u> Application for compensation ( <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: \$4,933.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	<u>2611</u> Application for compensation <i>Sixth Interim Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. (Hoffman, Juliana)
07/27/2021	<u>2612</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0.). (Hoffman, Juliana)
07/27/2021	<u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
07/27/2021	<u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
07/28/2021	<u>2615</u> Objection to (related document(s): <u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Initial Objection To Motion For Leave And To Emergency Consideration Of The Motion For Leave</i> filed by Interested Party Highland Dallas Foundation, Inc., Respondent Mark Patrick. (Phillips, Louis)
07/28/2021	<u>2616</u> Support/supplemental document ( <i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ). (Attachments: # <u>1</u> Exhibit B--Redacted PetroCap Partnership Agreement # <u>2</u> Exhibit C--Redacted SLP Partnership Agreement) (Annable, Zachery)
07/28/2021	<u>2617</u> <b>SEALED document regarding: Exhibit B: PetroCap Partnership Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2604</u> Order on motion to seal). (Annable, Zachery)
07/28/2021	<u>2618</u> <b>SEALED document regarding: Exhibit C: SLP Partnership Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2604</u> Order on motion to seal). (Annable, Zachery)
07/28/2021	<u>2619</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing the Filing Under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s) <u>2604</u> Order granting motion to seal exhibits (related document <u>2538</u> ) Entered on 7/23/2021. (Okafor, M.)). (Kass, Albert)
07/29/2021	<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15) (Montgomery, Paige)
07/29/2021	<u>2621</u> Objection to (related document(s): <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <u>1</u> Exhibit A – NexPoint PSA # <u>2</u> Exhibit B – PSA Redline) (Berghman, Thomas)
07/29/2021	<u>2623</u> Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21–10449, Civil Case Number: 3:21–cv–00538–N (RE: related document(s) <u>1957</u> Notice of appeal . (Whitaker, Sheniqua)
07/29/2021	<u>2624</u> Transmittal of addendum to record on appeal to U.S. District Court . Number of appellee records: 5 Sealed Documents (RE: related document(s) 2623 Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21–10449, Civil Case Number: 3:21–cv–00538–N (RE: related document(s) <u>1957</u> Notice of appeal .) (Whitaker, Sheniqua)
07/29/2021	<u>2625</u> Notice of docketing supplemental record on appeal. (RE: related document(s) <u>1957</u> Notice of appeal . (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Civil Case 3:21–CV–00538–N, Circuit Court Case 21–10449 (Whitaker, Sheniqua)
07/29/2021	<u>2626</u> Objection to (related document(s): <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <u>1</u> Exhibit A – PSA # <u>2</u> Exhibit B – PSA Redline) (Berghman, Thomas)
07/29/2021	<u>2627</u> Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty–Five Page (related document # <u>2613</u> ) Entered on 7/29/2021. (Okafor, M.)
07/29/2021	<u>2628</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
07/29/2021	<u>2629</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
07/29/2021	<u>2630</u> Certificate of service re: 1) Stipulation (A) Amending Scheduling Order and (B) Consolidating and Resolving Certain Matters; and 2) Debtors Amended Notice of Rule 30(b)(6) Deposition to Wick Phillips Gould & Martin, LLP Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2607</u> Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2345</u> Order to set hearing). filed by Debtor Highland Capital Management, L.P., <u>2608</u> Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/30/2021	

	<u>2631</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/30/2021	<u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$1,200,401.75, Expenses: \$19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. (Pomerantz, Jeffrey)
07/30/2021	<u>2633</u> Witness and Exhibit List filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property, 2537 Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i> (Berghman, Thomas)
07/30/2021	<u>2634</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property.</i> (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) (Annable, Zachery)
07/30/2021	<u>2635</u> Witness and Exhibit List filed by Interested Party PetroCap, LLC (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i> (Schultz, Sarah)
07/30/2021	<u>2636</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i> (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) (Annable, Zachery)
07/30/2021	<u>2637</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u> , (Montgomery, Paige)
07/30/2021	<u>2638</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2513</u> Notice of appeal, (Annable, Zachery).
07/30/2021	<u>2639</u> Certificate of service re: [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)</i> [Re Docket No. 2263] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2263</u> Assignment/Transfer of Claim. Fee Amount \$156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF

	L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
07/30/2021	<u>2640</u> Certificate of service re: 1) <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 Through January 31, 2021</i> ; 2) <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i> ; and 3) <i>Sixth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2609</u> Application for compensation ( <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: \$11,549.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2610</u> Application for compensation ( <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: \$4,933.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2611</u> Application for compensation <i>Sixth Interim Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/01/2021	<u>2641</u> Motion to compel Mediation. Filed by Interested Party James Dondero (Taylor, Clay)
08/02/2021	<u>2642</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u> , (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)
08/02/2021	<u>2643</u> Application for compensation ( <i>Fourth Monthly Fee Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: \$37153.08, Expenses: \$30.90. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2644</u> Application for compensation ( <i>Fifth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: \$41,936.40, Expenses: \$573.69. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2645</u> Application for compensation ( <i>Sixth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: \$35,841.24, Expenses: \$0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2646</u> Application for compensation ( <i>Seventh Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: \$78,401.16, Expenses: \$0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	

	<p><u>2647</u> Certificate of service re: 1) <i>The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i>; 2) <i>Motion for Expedited Consideration on the Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i>; and 3) <i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2616</u> Support/supplemental document (<i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>). (Attachments: # 1 Exhibit B--Redacted PetroCap Partnership Agreement # 2 Exhibit C--Redacted SLP Partnership Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/02/2021	<p><u>2648</u> Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>
08/02/2021	<p><u>2649</u> Reply to (related document(s): <u>2626</u> Objection filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>
08/02/2021	<p><u>2650</u> Joinder by the Official Committee of Unsecured Creditors to the Debtor's Reply and Response filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2648</u> Reply, <u>2649</u> Reply). (Hoffman, Juliana)</p>
08/02/2021	<p><u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, Expenses: \$12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. (Hoffman, Juliana)</p>
08/02/2021	<p><u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)<u>2620</u> Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # <u>1</u> Proposed Order) (Reid, Penny)</p>
08/02/2021	<p><u>2653</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2636</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 18) (Annable, Zachery)</p>
08/02/2021	<p><u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order) (Reid, Penny)</p>

08/03/2021	<u>2655</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2554</u> Application for compensation ( <i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Hayward PLLC, Debto). (Annable, Zachery)
08/03/2021	<u>2656</u> Amended Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>2648</u> Reply filed by Debtor Highland Capital Management, L.P.) ( <i>Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
08/03/2021	<u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Exhibit UST Questionnaire and Information Sheet (Ex A) # <u>2</u> Exhibit Proposed Order (Ex B)) (Taylor, Clay)
08/03/2021	<u>2658</u> Certificate of service re: <i>Documents Served on July 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2627</u> Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty-Five Page (related document <u>2613</u> ) Entered on 7/29/2021. (Okafor, M.), <u>2628</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2629</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/03/2021	<u>2659</u> Objection to (related document(s): <u>1888</u> Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/04/2021	<u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)
08/04/2021	<u>2661</u> Motion to appear pro hac vice for Thomas P. Cimino. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2662</u> Motion to appear pro hac vice for Michael M. Eidelman. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2663</u> Motion to appear pro hac vice for David L. Kane. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2664</u> Motion to appear pro hac vice for William W. Thorsness. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2665</u> Motion to appear pro hac vice for Douglas J. Lipke. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2661</u> ). (U.S. Treasury)

08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2662</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2663</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2664</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2665</u> ). (U.S. Treasury)
08/04/2021	<u>2666</u> PDF with attached Audio File. Court Date & Time [08/04/2021 08:49:40 AM]. File Size [ 28979 KB ]. Run Time [ 02:03:57 ]. (admin).
08/04/2021	<u>2667</u> Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14 & #15 THAT APPEAR AT DEOC. 2634 IN REGARDS TO MAPLE HOLDINGS BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	<u>2668</u> Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17 THAT APPEAR AT DOC. #2636 AND EXHIBIT #18 THAT APPEAR AT DOC. #2653 FOR PETROCAP III; BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	<u>2669</u> Hearing held on 8/4/2021. (RE: related document(s) <u>1888</u> Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.) (Edmond, Michael)
08/04/2021	<u>2670</u> Hearing held on 8/4/2021. (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)
08/04/2021	<u>2671</u> Hearing held on 8/4/2021. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management,

	L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)
08/04/2021	<u>2672</u> Request for transcript regarding a hearing held on 8/4/2021. The requested turn-around time is hourly. (Edmond, Michael)
08/04/2021	<u>2673</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # <u>1</u> Exhibit A)(Vasek, Julian)
08/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal.ntcapl] ( 298.00). Receipt number 28895617, amount \$ 298.00 (re: Doc# <u>2673</u> ). (U.S. Treasury)
08/04/2021	<u>2674</u> Certificate of service re: <i>Documents Served on July 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2631</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$1,200,401.75, Expenses: \$19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2634</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) filed by Debtor Highland Capital Management, L.P., <u>2636</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) filed by Debtor Highland Capital Management, L.P., <u>2637</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2638</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2513</u> Notice of appeal,. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/05/2021	<u>2675</u> Transcript regarding Hearing Held 08/04/2021 (83 pages) RE: Status Conference re: Application for Administrative Expenses; Motions to Sell. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2669</u> Hearing held on 8/4/2021. (RE: related document(s) <u>1888</u> Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G.

	<p>Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.), 2670 Hearing held on 8/4/2021. (RE: related document(s)<a href="#">2535</a> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.), 2671 Hearing held on 8/4/2021. (RE: related document(s)<a href="#">2537</a> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 11/3/2021. (Rehling, Kathy)</p>
08/05/2021	<p><a href="#">2676</a> Certificate of service re: <i>Documents Served on August 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2642</a> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">2620</a> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">2620</a>, (Attachments: # 1 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">2648</a> Reply to (related document(s): <a href="#">2621</a> Objection filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <a href="#">2649</a> Reply to (related document(s): <a href="#">2626</a> Objection filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <a href="#">2650</a> Joinder by the Official Committee of Unsecured Creditors to the Debtor's Reply and Response filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">2648</a> Reply, <a href="#">2649</a> Reply). filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">2651</a> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, Expenses: \$12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">2652</a> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s)<a href="#">2620</a> Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">2653</a> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2636</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 18) filed by Debtor Highland Capital Management, L.P., <a href="#">2654</a> Motion for expedited hearing(related documents <a href="#">2652</a> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
08/06/2021	

	<u>2678</u> Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s) <u>2607</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.)
08/06/2021	<u>2679</u> Certificate Certificate of Conference filed by Interested Party James Dondero (RE: related document(s) <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> )). (Taylor, Clay)
08/06/2021	<u>2680</u> Certificate of service re: <i>1) Debtor's Amended Reply in Support of its Motion for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief; and 2) Debtor's Objection to Application for Administrative Claim of NexBank Capital Inc., NexBank Securities, Inc., NexBank Title, Inc., and NexBank</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2656</u> Amended Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>2648</u> Reply filed by Debtor Highland Capital Management, L.P.) ( <i>Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2659</u> Objection to (related document(s): <u>1888</u> Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2021	<u>2681</u> Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document # <u>2661</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2682</u> Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document # <u>2662</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2683</u> Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document # <u>2663</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2684</u> Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document # <u>2664</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2685</u> Order granting motion to appear pro hac vice adding Douglas J. Lipke for James Dondero (related document # <u>2665</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2686</u> Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s) <u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 8/6/2021 (Okafor, M.)
08/06/2021	<u>2687</u> Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document # <u>2535</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2688</u> Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination)) Entered on 8/6/2021. (Okafor, M.)

08/06/2021	<u>2689</u> Certificate of service re: <i>Memorandum Opinion and Order Holding Certain Parties and Their Attorneys in Civil Contempt of Court for Violation of Bankruptcy Court Orders Filed by Claims Agent Kurtzman Carson Consultants LLC</i> (related document(s) <u>2660</u> <i>Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders</i> (RE: related document(s) <u>2247</u> <i>Motion for order to show cause filed by Debtor Highland Capital Management, L.P.</i> ). Entered on 8/4/2021 (Okafor, M.). (Kass, Albert)
08/06/2021	<u>2690</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2660</u> <i>Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders</i> (RE: related document(s) <u>2247</u> <i>Motion for order to show cause filed by Debtor Highland Capital Management, L.P.</i> ). Entered on 8/4/2021 (Okafor, M.)) No. of Notices: 3. Notice Date 08/06/2021. (Admin.)
08/08/2021	<u>2691</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2681</u> <i>Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero</i> (related document <u>2661</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2692</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2682</u> <i>Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero</i> (related document <u>2662</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2693</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2683</u> <i>Order granting motion to appear pro hac vice adding David L. Kane for James Dondero</i> (related document <u>2663</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2694</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2684</u> <i>Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero</i> (related document <u>2664</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/09/2021	<u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0.</i> Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. (Hoffman, Juliana)
08/09/2021	<u>2696</u> Adversary case 21–03051. Complaint by James Dondero against Alvarez & Marsal CRF Management, LLC and Farallon Capital Management, L.L.C.. Fee Amount \$350 (Attachments: # <u>1</u> Appendix # <u>2</u> Adversary Cover Sheet). Nature(s) of suit: 01 (Determination of removed claim or cause). (Rosenthal, Michael)
08/09/2021	<u>2697</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
08/09/2021	<u>2698</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (Leen, Edward)
08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19–34054–sgj11) [claims,trclmagt] ( 52.00). Receipt number 28905213, amount \$ 52.00 (re: Doc# <u>2697</u> ).

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	(U.S. Treasury)
08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 52.00). Receipt number 28905213, amount \$ 52.00 (re: Doc# <u>2698</u> ). (U.S. Treasury)
08/10/2021	<u>2699</u> Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document # <u>2537</u> ) Entered on 8/10/2021. (Rielly, Bill)
08/11/2021	<u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
08/11/2021	<u>2701</u> Certificate of No Objection filed by Other Professional Teneo Capital, LLC (RE: related document(s) <u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89.). (Hoffman, Juliana)
08/11/2021	<u>2702</u> Certificate of service re: <i>Documents Served on August 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2678</u> Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s) <u>2607</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.), <u>2686</u> Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s) <u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 8/6/2021 (Okafor, M.), <u>2687</u> Order approving Debtors Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document <u>2535</u> ) Entered on 8/6/2021. (Okafor, M.), <u>2688</u> Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination)) Entered on 8/6/2021. (Okafor, M.)). (Kass, Albert)
08/12/2021	<u>2703</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2595</u> Application for compensation ( <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Hayward PLLC, Deb). (Annable, Zachery)
08/12/2021	<u>2704</u> Certificate of service re: <i>Twentieth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2021 to and Including June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/13/2021	

	<u>2706</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/13/2021	<u>2707</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	<u>2708</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01895-D. (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	<u>2709</u> Certificate of service re: <i>Order Approving Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2699</u> Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document <u>2537</u> ) Entered on 8/10/2021.). (Kass, Albert)
08/16/2021	<u>2710</u> Application for compensation – <i>Eighth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: \$161,981.82, Expenses: \$1,100.68. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/16/2021	<u>2711</u> Motion to appear pro hac vice for Blaire Cahn. Fee Amount \$100 Filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (Smith, Frances)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28921283, amount \$ 100.00 (re: Doc# <u>2711</u> ). (U.S. Treasury)
08/16/2021	<u>2712</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # <u>1</u> Ex. 1 – Order)(Assink, Bryan)
08/16/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28921379, amount \$ 298.00 (re: Doc# <u>2712</u> ). (U.S. Treasury)
08/16/2021	<u>2713</u> Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti &amp; Company PLLC, Mazin A. Sbaiti, Jonathan Bridges</i> . Fee Amount \$298 filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP. Appellant Designation due by 08/30/2021. (Sbaiti, Mazin). Related document(s) <u>2660</u> Memorandum of opinion. Modified LINKAGE on 9/17/2021 (Blanco, J.).
08/16/2021	<u>2714</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Transcript) (Taylor, Clay)
08/16/2021	

	<u>2715</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Dolomiti LLC, Dana Scott Breault, SLHC Trust, The Get Good Non Exempt Trust No 2, Get Good Non Exempt Trust No 1, The Dondero Insurance Rabbi Trust, Get Better Trust, Canis Minor Trust, Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
08/16/2021	<u>2716</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Advisors GP, LLC, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Vasek, Julian)
08/16/2021	<u>2717</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party NexPoint Strategic Opportunities Fund. (Hogewood, A.)
08/16/2021	<u>2718</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order</i> filed by Highland Dallas Foundation, Inc., Charitable DAF GP, L.P., Charitable DAF HoldCo, Ltd., Interested Party Charitable DAF Fund, LP. (Phillips, Louis)
08/16/2021	<u>2719</u> Notice of Appearance and Request for Notice by Cortney C. Thomas filed by Interested Parties Okada Family Foundation, Inc., The Okada Insurance Rabbi Trust, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Mark & Pamela Okada Family Trust – Exempt Trust #1, Mark Okada. (Thomas, Cortney)
08/16/2021	<u>2720</u> Motion to appear pro hac vice for Brian Glueckstein. Fee Amount \$100 Filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust – Exempt Trust #1, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Okada Insurance Rabbi Trust (Thomas, Cortney)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28921800, amount \$ 100.00 (re: Doc# <u>2720</u> ). (U.S. Treasury)
08/16/2021	<u>2721</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust – Exempt Trust #1, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Okada Insurance Rabbi Trust. (Thomas, Cortney)
08/16/2021	<u>2722</u> Joinder by <i>NexPoint RE Entities' to Objections to 2004 Motion</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc., Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., <u>2714</u> Objection, <u>2715</u> Objection, <u>2716</u> Objection). (Drawhorn, Lauren)
08/16/2021	<u>2723</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official

	Committee of Unsecured Creditors)and <i>Reservation of Rights</i> filed by Witness Nancy Dondero. (Attachments: # <u>1</u> Exhibit A) (Deutsch-Perez, Deborah)
08/16/2021	<u>2724</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors)Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order filed by Interested Parties Mary Jalonick, Highland Kansas City Foundation, Inc., Highland Santa Barbara Foundation, Inc., The Greater Kansas City Community Foundation, The Santa Barbara Foundation, The Dallas Foundation. (Attachments: # <u>1</u> Publication Regarding Ms. Jalonicks Service) (Phillips, Louis)
08/16/2021	<u>2725</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse. (Smith, Frances)
08/16/2021	<u>2726</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor Grant James Scott III. (Kane, John)
08/17/2021	<u>2727</u> Certificate of service re: Reservation of Rights Regarding Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (RE: related document(s) <u>2725</u> Objection). (Soderlund, Eric)
08/17/2021	<u>2728</u> Motion to appear pro hac vice for Susheel Kirpalani. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige) MODIFIED attorney name on 8/19/2021 (Okafor, M.).
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924194, amount \$ 100.00 (re: Doc# <u>2728</u> ). (U.S. Treasury)
08/17/2021	<u>2729</u> Motion to appear pro hac vice for Benjamin Finestone. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924291, amount \$ 100.00 (re: Doc# <u>2729</u> ). (U.S. Treasury)
08/17/2021	<u>2730</u> Motion to appear pro hac vice for Deborah Newman. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924312, amount \$ 100.00 (re: Doc# <u>2730</u> ). (U.S. Treasury)
08/17/2021	<u>2731</u> Motion to appear pro hac vice for Jordan Harap. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924326, amount \$ 100.00 (re: Doc# <u>2731</u> ). (U.S. Treasury)

08/17/2021	<u>2732</u> Witness and Exhibit List for August 19, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Montgomery, Paige)
08/17/2021	<u>2733</u> Witness and Exhibit List filed by Creditor Grant James Scott III (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Kane, John)
08/17/2021	<u>2734</u> Application for compensation – <i>Ninth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: \$59,205.24, Expenses: \$169.36. Filed by Attorney Gregory Getty Hesse, Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/17/2021	<u>2735</u> Witness and Exhibit List filed by Interested Party Highland Dallas Foundation, Inc. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 27 # <u>16</u> 28 # <u>17</u> Exhibit 36 # <u>18</u> Exhibit 37) (Phillips, Louis)
08/17/2021	<u>2736</u> Certificate of service re: Motion for Order on Rule 2004 Parties, Notice of Hearing on Motion for Order on Rule 2004 Parties, Amended Notice of Hearing on Motion for Order on Rule 2004 Parties, Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Motion for Expedited Consideration on Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Order Granting Emergency Motion to Set Briefing Schedule, Motion for Leave to File Brief in Excess of 25–pages, Motion for Expedited Consideration of Motion for Leave, Order Granting Leave to File Brief in Excess of 25–pages filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2613</u> Motion for leave to File a Brief in Excess of Twenty–Five Pages, <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty–Five Pages</i> , <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., <u>2627</u> Order on motion for leave, <u>2637</u> Notice of hearing, <u>2642</u> Notice of hearing, <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination), <u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) , <u>2688</u> Order on motion to extend/shorten time). (Montgomery, Paige)
08/18/2021	<u>2737</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X # <u>25</u> Dondero Ex. Y # <u>26</u> Dondero Ex. Z # <u>27</u> Dondero Ex. AA # <u>28</u> Dondero Ex. BB # <u>29</u> Dondero Ex. CC # <u>30</u> Dondero Ex. DD # <u>31</u> Dondero Ex. EE # <u>32</u> Dondero Ex. FF # <u>33</u> Dondero Ex. GG # <u>34</u> Dondero Ex. HH # <u>35</u> Dondero Ex. II # <u>36</u> Dondero Ex. JJ) (Assink, Bryan)
08/18/2021	<u>2738</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2673</u> Notice of appeal). Appellee designation due by 09/1/2021. (Vasek, Julian)
08/18/2021	<u>2739</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2673</u> Notice of appeal). (Vasek, Julian)

08/18/2021	<u>2740</u> Witness and Exhibit List filed by Witness Nancy Dondero (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Deitsch–Perez, Deborah)
08/18/2021	<u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
08/18/2021	<u>2742</u> Application for compensation <i>Twenty–Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. (Pomerantz, Jeffrey)
08/18/2021	<u>2743</u> Notice of Agreed Order filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15)). (Attachments: # <u>1</u> Exhibit A–Proposed Order) (Montgomery, Paige)
08/19/2021	<u>2744</u> Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document # <u>2711</u> ) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	<u>2745</u> Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust – Exempt Trust #1; The Mark & Pamela Okada Family Trust – Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document # <u>2720</u> ) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	<u>2746</u> Hearing held on 8/19/2021. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.) (Edmond, Michael)
08/19/2021	<u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/19/2021	<u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/19/2021	<u>2749</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u>

	Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2748</u> , (Annable, Zachery)
08/20/2021	<u>2750</u> Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc # <u>2620</u> ) Entered on 8/20/2021. (Okafor, M.)
08/20/2021	<u>2751</u> Certificate of service re: <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> Witness and Exhibit List for August 19, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/20/2021	<u>2752</u> Certificate of service re: 1) <i>Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> ; and 2) <i>Twenty-Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/21/2021	<u>2753</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2744</u> Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document <u>2711</u> ) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/21/2021	<u>2754</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2745</u> Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust – Exempt Trust #1; The Mark & Pamela Okada Family Trust – Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document <u>2720</u> ) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/23/2021	<u>2755</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/). (Pomerantz, Jeffrey)
08/23/2021	<u>2756</u> Response opposed to (related document(s): <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> ) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/23/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28936978, amount \$ 298.00 (re: Doc# <u>2713</u> ). (U.S. Treasury)
08/23/2021	

	<u>2757</u> Agreed first amended scheduling order (RE: related document(s) <u>2196</u> Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , Entered on 8/23/2021 (Okafor, M.)
08/23/2021	<u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal). (Sbaiti, Mazin)
08/23/2021	<u>2760</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/23/2021	<u>2761</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2758</u> Amended Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti &amp; Company PLLC, Mazin A. Sbaiti, Jonathan Bridges</i> . (Whitaker, Sheniqua)
08/23/2021	<u>2762</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01974-X. (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Whitaker, Sheniqua) MODIFIED text on 8/24/2021 (Whitaker, Sheniqua).
08/24/2021	<u>2763</u> Withdrawal ( <i>Notice of Withdrawal of Amended Motion to Compel Mediation</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> )). (Assink, Bryan)
08/24/2021	<u>2765</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # 1 Ex. 1 – Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/24/2021	<u>2766</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Attachments: # 1 Ex. 1 – Order)) (Whitaker, Sheniqua)
08/24/2021	<u>2767</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01979-S. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Whitaker, Sheniqua)
08/24/2021	<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 8/24/2021. (Okafor, M.).
08/24/2021	<u>2769</u> Order granting motion to appear pro hac vice adding Susheel Kirpalani for Litigation Sub-Trust (related document # <u>2728</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2770</u> Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub-Trust (related document # <u>2729</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2771</u> Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub-Trust (related document # <u>2730</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2772</u> Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub-Trust (related document # <u>2731</u> ) Entered on 8/24/2021. (Okafor, M.)

08/24/2021	<p><u>2773</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
08/24/2021	<p><u>2774</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
08/24/2021	<p><u>2775</u> Certificate of service re: 1) <i>Notice of Proposed Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i>; 2) <i>Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i>; and 3) <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2743</u> <i>Notice of Agreed Order</i> filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (RE: related document(s)<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). (Attachments: # 1 Exhibit A-Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2749</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2748</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/24/2021	<p><u>2776</u> Certificate of service re: (<i>Supplemental</i>) 1) <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i>; and 2) <i>Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2732</u> <i>Witness and Exhibit List for August 19, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2741</u> <i>Omnibus Reply to</i> (related document(s): <u>2714</u> <i>Objection</i> filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2751</u> Certificate of service re: <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2732</u> <i>Witness and Exhibit List for August 19, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2752</u> Certificate of service re: 1) <i>Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i>; and 2) <i>Twenty-Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related</p>

	document(s) <u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
08/25/2021	<u>2777</u> Certificate of service re: <i>Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2750</u> Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc <u>2620</u> ) Entered on 8/20/2021. (Okafor, M.)). (Kass, Albert)
08/26/2021	<u>2778</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2553</u> Amended appellant designation of contents for inclusion in record on appeal pursuant to Fed. R. Bankr. P. 8009 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2452</u> Appellant designation).). (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
08/26/2021	<u>2779</u> Certificate of service re: <i>1) Debtors Response to James Donderos First Amended Motion for Entry of an Order (I) Compelling Mediation and (II) Granting Related Relief; and 2) Agreed First Amended Scheduling Order with Respect to Debtors Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2756</u> Response opposed to (related document(s): <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> ) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2757</u> Agreed first amended scheduling order (RE: related document(s) <u>2196</u> Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , Entered on 8/23/2021 (Okafor, M.)). (Kass, Albert)
08/26/2021	<u>2780</u> Application for compensation ( <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$52,302.50, Expenses: \$1,131.65. Filed by Other Professional Hayward PLLC (Annable, Zachery)
08/26/2021	<u>2781</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2643</u> Application for compensation ( <i>Fourth Monthly Fee Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: \$37153.08, Expenses: \$30.90.). (Hesse, Gregory)
08/26/2021	<u>2782</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2644</u> Application for compensation ( <i>Fifth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: \$41,936.40, Expenses: \$573.69.). (Hesse, Gregory)
08/26/2021	<u>2783</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2645</u> Application for compensation ( <i>Sixth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: \$35,841.24, Expenses: \$0.00.). (Hesse, Gregory)

08/26/2021	<u>2784</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2646</u> Application for compensation ( <i>Seventh Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: \$78,401.16, Expenses: \$0.00.). (Hesse, Gregory)
08/26/2021	<u>2785</u> BNC certificate of mailing. (RE: related document(s) <u>2761</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2758</u> Amended Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti &amp; Company PLLC, Mazin A. Sbaiti, Jonathan Bridges.</i> ) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2786</u> BNC certificate of mailing. (RE: related document(s) <u>2766</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Attachments: # 1 Ex. 1 – Order))) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2787</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2770</u> Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub–Trust (related document <u>2729</u> ) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 0. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2788</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2771</u> Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub–Trust (related document <u>2730</u> ) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2789</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2772</u> Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub–Trust (related document <u>2731</u> ) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/27/2021	<u>2790</u> Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/27/2021	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 28948918, amount \$ 100.00 (re: Doc# <u>2790</u> ). (U.S. Treasury)
08/27/2021	<u>2791</u> Certificate of service re: 1) <i>Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i> ; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i> ; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2768</u> <i>Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims</i> (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 8/24/2021. (Okafor, M.), <u>2773</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2774</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

08/27/2021	<p><u>2792</u> Certificate of service re: <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2780</u> Application for compensation (<i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$52,302.50, Expenses: \$1,131.65. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)</p>
08/27/2021	<p><u>2793</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
08/28/2021	<p><u>2794</u> Transcript regarding Hearing Held 08/19/2021 (52 pages) RE: Motion for 2004 Exam (#2620). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/26/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2746 Hearing held on 8/19/2021. (RE: related document(s)<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.)). Transcript to be made available to the public on 11/26/2021. (Rehling, Kathy)</p>
08/30/2021	<p><u>2795</u> Notice (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
08/30/2021	<p><u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)</p>
08/30/2021	<p><u>2797</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)<u>2712</u> Notice of appeal). Appellee designation due by 09/13/2021. (Assink, Bryan)</p>
08/30/2021	<p><u>2798</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s)<u>2713</u> Notice of appeal). Appellee designation due by 09/13/2021. (Sbaiti, Mazin)</p>

08/31/2021	<u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document # <u>2790</u> ) Entered on 8/31/2021. (Okafor, M.)
09/01/2021	<u>2800</u> Certificate of service re: <i>Motion for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2790</u> Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	<u>2801</u> Notice ( <i>Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2021	<u>2802</u> Certificate of service re: <i>1) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197; and 2) Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2795</u> Notice ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	<u>2803</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document <u>2790</u> ) Entered on 8/31/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 09/02/2021. (Admin.)
09/03/2021	<u>2804</u> Certificate of service re: <i>1) Order for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.; and 2) Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document <u>2790</u> ) Entered on 8/31/2021. (Okafor, M.), <u>2801</u> Notice ( <i>Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/03/2021	<u>2805</u> Certificate of service re: [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2697 and 2698]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2697</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, <u>2698</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
09/03/2021	<u>2806</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)).

	<p>filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
09/03/2021	<p><u>2807</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: &amp;#036). (Hoffman, Juliana)</p>
09/03/2021	<p><u>2808</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, E). (Hoffman, Juliana)</p>
09/03/2021	<p><u>2809</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,9). (Hoffman, Juliana)</p>
09/07/2021	<p><u>2811</u> Notice of Transmittal; 3:21-CV-01590-N – Appellant Supplemental Record Vol. 1 and 2 per District Court order entered 8/24/2021 . (Blanco, J.) Modified TEXT on 9/7/2021 (Blanco, J.).</p>
09/07/2021	<p><u>2812</u> Order denying as moot motion to compel compliance with Bankruptcy Rule 2015.3 (related document # <u>2256</u>) Entered on 9/7/2021. (Okafor, M.)</p>
09/08/2021	<p><u>2813</u> Notice (<i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). (Annable, Zachery)</p>
09/08/2021	<p><u>2815</u> Transmittal of record on appeal to U.S. District Court . Deficient record on appeal: Appellee failed to provide court admitted exhibits for hearings: January 9, 2020 (doc 335); AND July 14, 2020 (doc 836). , Transmitted: Volume 1, Mini Record. Number of appellant volumes: 21 Number of appellee volumes: 2. Civil Case Number: 3:21-CV-01585-S (RE: related document(s)<u>2513</u> Notice of appeal) (Blanco, J.)</p>
09/08/2021	<p><u>2816</u> Notice of docketing DEFICIENT record on appeal. 3:21-CV-01585-S (RE: related document(s)<u>2513</u> Notice of appeal (RE: related document(s)<u>2506</u> Order on motion to reconsider). (Blanco, J.)</p>
09/09/2021	<p><u>2817</u> Order approving stipulation and agreed order authorizing withdrawal of proof of claims 75 and 197 (RE: related document(s)<u>2795</u> Notice (generic) filed by Debtor Highland</p>

	Capital Management, L.P.). Entered on 9/9/2021 (Okafor, M.)
09/09/2021	<u>2818</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey). (Pomerantz, Jeffrey)
09/09/2021	<u>2819</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
09/09/2021	<u>2820</u> Notice to take deposition of Robert L. Kehr filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
09/09/2021	<u>2821</u> Notice to take deposition of Ben Selman filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/09/2021	<u>2822</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2710</u> Application for compensation – <i>Eighth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: \$161,981.82, Expenses: \$1,100.68.). (Hesse, Gregory)
09/09/2021	<u>2823</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2734</u> Application for compensation – <i>Ninth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: \$59,205.24, Expenses: \$169.36.). (Hesse, Gregory)
09/09/2021	<u>2824</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C), <u>2819</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G)). Hearing to be held on 10/25/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2819</u> and for <u>2796</u> , (Annable, Zachery)
09/10/2021	<u>2825</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time)). (Annable, Zachery)
09/10/2021	<u>2826</u> Certificate of service re: <i>(Supplemental) 1) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; and 2) Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice <i>(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice <i>(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as

	<p>modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.), <u>2791</u> Certificate of service re: 1) <i>Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i>; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.), <u>2773</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2774</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
09/13/2021	<p><u>2827</u> Notice (<i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)</p>
09/13/2021	<p><u>2828</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (Related document #<u>2748</u>) Entered on 9/13/2021. (Okafor, M.)</p>
09/13/2021	<p><u>2829</u> Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document # <u>2589</u>) Entered on 9/13/2021. (Okafor, M.)</p>
09/13/2021	<p><u>2831</u> Certificate of service re: <i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2813</u> Notice (<i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/13/2021	<p><u>2832</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2713</u> Notice of appeal, <u>2758</u> Amended notice of appeal). (Annable, Zachery).</p>

09/13/2021	<u>2833</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2712</u> Notice of appeal). (Annable, Zachery)
09/14/2021	<u>2834</u> Notice of change of address filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/14/2021	<u>2835</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . , Transmitted: Volume 1, Mini Record. Number of appellant volumes: 21 . Civil Case Number: 3:21-CV-01295-X (RE: related document(s) <u>2398</u> Notice of appeal ) (Blanco, J.)
09/14/2021	<u>2837</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-01295-X (RE: related document(s) <u>2398</u> Notice of appeal (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). ) (Blanco, J.)
09/14/2021	<u>2838</u> Notice of transmittal: 13 SEALED DOCS (RE: related document(s) <u>2837</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-01295-X (RE: related document(s) <u>2398</u> Notice of appeal (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). ) (Blanco, J.)). (Blanco, J.)
09/14/2021	<u>2839</u> Certificate of service re: <i>Documents Served on or Before September 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2817</u> Order approving stipulation and agreed order authorizing withdrawal of proof of claims 75 and 197 (RE: related document(s) <u>2795</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 9/9/2021 (Okafor, M.), <u>2819</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>2821</u> Notice to take deposition of Ben Selman filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2824</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C), <u>2819</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 10/25/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2819</u> and for <u>2796</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/14/2021	<u>2840</u> Notice of appeal <i>Order Denying Motion to Compel Compliance With Bankruptcy Rule 2015.3</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2812</u> Order on motion to compel). Appellant Designation due by 09/28/2021. (Attachments: # <u>1</u> Exhibit A)(Draper, Douglas)
09/14/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal.ntcapl] ( 298.00). Receipt number 28984191, amount \$ 298.00 (re: Doc# <u>2840</u> ). (U.S. Treasury)
09/15/2021	<u>2841</u> First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2840</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A)(Draper, Douglas)
09/15/2021	<u>2842</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2829</u> Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document <u>2589</u> ) Entered on 9/13/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 09/15/2021. (Admin.)
09/16/2021	<u>2844</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2611</u> Application for compensation <i>Sixth Interim Application for</i>

	<i>Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0.). (Hoffman, Juliana)
09/16/2021	<u>2845</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0.). (Hoffman, Juliana)
09/16/2021	<u>2846</u> Certificate of service re: <i>Documents Served on September 13, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2827</u> Notice ( <i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P., <u>2828</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (Related document # <u>2748</u> ) Entered on 9/13/2021. (Okafor, M.), <u>2829</u> Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document <u>2589</u> ) Entered on 9/13/2021. (Okafor, M.), <u>2832</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2713</u> Notice of appeal, <u>2758</u> Amended notice of appeal).. filed by Debtor Highland Capital Management, L.P., <u>2833</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2712</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/17/2021	<u>2847</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 13 . Civil Case Number: 3:21-CV-1895-D (RE: related document(s) <u>2673</u> Notice of appeal Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). ) (Blanco, J.)
09/17/2021	<u>2848</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-01895-D (RE: related document(s) <u>2673</u> Notice of appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Blanco, J.)
09/17/2021	<u>2849</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2609</u> Application for compensation ( <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Deloitte Tax LLP.). (Annable, Zachery)
09/17/2021	<u>2850</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2610</u> Application for compensation ( <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Deloitte Tax LLP). (Annable, Zachery)
09/17/2021	<u>2851</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2780</u> Application for compensation ( <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> ) for Hayward PLLC, Debtor's A). (Annable, Zachery)
09/17/2021	

	<u>2852</u> Application for compensation for Eastern Point Trust Company, Inc. , Administrator of non-qualified executive compensation and the Trustee for the Associated Rabi Trust for Highland Capital Management, L.P., Fee: \$203423.00, Expenses: \$0.00. Filed by Eastern Point Trust Company, Inc. (Attachments: # <u>1</u> Exhibit 1) (Okafor, M.)
09/17/2021	<u>2853</u> Certificate of service re: <i>Notice of Reorganized Debtors Change of Address</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2834</u> Notice of change of address filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/20/2021	<u>2854</u> Stipulation by Highland Capital Management, L.P. and The Pension Benefit Guaranty Corporation. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery)
09/21/2021	<u>2855</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims 49, 50, and 51 filed by The Pension Benefit Guaranty Corporation (RE: related document(s) <u>2854</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/21/2021 (Okafor, M.)
09/21/2021	<u>2856</u> Motion for leave ( <i>Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
09/21/2021	<u>2857</u> Motion to disallow claims ( <i>Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
09/22/2021	<u>2858</u> Application for compensation ( <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from April 1, 2021 through April 30, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$55,665.00, Expenses: \$2,879.41. Filed by Attorney Zachery Z. Annable, Other Professional Hayward PLLC (Annable, Zachery)
09/22/2021	<u>2859</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2021 through July 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
09/22/2021	<u>2861</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2841</u> First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2840</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
09/22/2021	<u>2862</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2841</u> Amended Notice of appeal <i>Order Denying Motion to Compel Compliance With Bankruptcy Rule 2015.3</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2812</u> Order on motion to compel). (Attachments: # <u>1</u> Exhibit A)) (Whitaker, Sheniqua)
09/22/2021	<u>2863</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-02268S. (RE: related document(s) <u>2841</u> First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2840</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A)) (Whitaker, Sheniqua)
09/22/2021	<u>2864</u> Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff & Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance

	Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021. (Annable, Zachery)
09/22/2021	<u>2865</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2864</u> Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff & Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021.). Hearing to be held on 11/3/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2864</u> , (Annable, Zachery)
09/23/2021	<u>2866</u> Certificate of service re: <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 49, 50, and 51 Filed by the Pension Benefit Guaranty Corporation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2854</u> Stipulation by Highland Capital Management, L.P. and The Pension Benefit Guaranty Corporation. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2021	<u>2868</u> Application for administrative expenses <i>for rank-and-file employees</i> Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Soderlund, Eric)
09/24/2021	<u>2869</u> WITHDRAWN at # <u>3288</u> . Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Soderlund, Eric) Modified on 3/4/2022 (Ecker, C.).
09/24/2021	<u>2870</u> Notice ( <i>First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/24/2021	<u>2871</u> Application for compensation ( <i>Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 through May 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$51,697.50, Expenses: \$3,556.31. Filed by Other Professional Hayward PLLC (Annable, Zachery)
09/24/2021	<u>2872</u> Application for compensation ( <i>FINAL</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021. (Hesse, Gregory)
09/24/2021	<u>2873</u> Certificate of service re: <i>1) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 49, 50, and 51 Filed by the Pension Benefit Guaranty Corporation; 2) Motion of the Reorganized Debtor for an Order Authorizing Entry Into an Amended and Restated Employee Stipulation; and 3) Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2855</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims 49, 50, and 51 filed by The Pension Benefit Guaranty Corporation (RE: related document(s) <u>2854</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/21/2021 (Okafor, M.), <u>2856</u> Motion for leave ( <i>Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2857</u> Motion to disallow claims ( <i>Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

09/24/2021	<u>2874</u> BNC certificate of mailing. (RE: related document(s) <u>2862</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2841</u> Amended Notice of appeal <i>Order Denying Motion to Compel Compliance With Bankruptcy Rule 2015.3</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2812</u> Order on motion to compel). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 09/24/2021. (Admin.)
09/27/2021	<u>2875</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 43 Number of appellee volumes: 2. Civil Case Number: 3:21-CV-01974-X (RE: related document(s) <u>2713</u> Notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP. Related document(s) <u>2660</u> Memorandum of opinion. Modified LINKAGE on 9/17/2021 (Blanco, J.), <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal.) (Blanco, J.)
09/27/2021	<u>2876</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-01974-X (RE: related document(s) <u>2713</u> Notice of appeal <u>2660</u> Memorandum of opinion. <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal.) (Blanco, J.)
09/27/2021	<u>2877</u> Certificate of service re: <i>(Supplemental) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice <i>(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice <i>(Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
09/27/2021	<u>2888</u> Request for Removal from 2002 Service List filed by Creditor Patrick Daugherty . (Tello, Chris) (Entered: 09/29/2021)
09/27/2021	<u>2889</u> Motion to Strike (related document(s) <u>2852</u> Application for compensation) Filed by Other Professional Eastern Point Trust Company, Inc. (Tello, Chris) (Entered: 09/29/2021)
09/27/2021	<u>2890</u> INCORRECT ENTRY: Docketed in this Case In Error – Notice of change of address filed by Creditor Georganna L. Simpson, P.C. . (Tello, Chris) Modified on 12/27/2021 (Okafor, Marcey). (Entered: 09/29/2021)
09/28/2021	<u>2878</u> Certificate of service re: <i>Documents Served on September 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2858</u> Application for compensation <i>(Sixteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from April 1, 2021 through April 30, 2021)</i> for Hayward PLLC, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$55,665.00, Expenses: \$2,879.41. Filed by Attorney Zachery Z. Annable, Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2859</u> Notice <i>(Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the</i>

	<p><i>Period from July 1, 2021 through July 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2864</u> Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff &amp; Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021. filed by Debtor Highland Capital Management, L.P., <u>2865</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2864</u> Omnibus Objection to claim(s) of Creditor(s) Chubb National Insurance Company; Contrarian Funds, LLC; Duff &amp; Phelps, LLP; Federal Insurance Company; Great Northern Insurance Company; Great Northern Insurance Company, Chubb National Insurance Company, and Federal Insurance Company; Markit WSO Corp; Markit WSO Corp; A. Dean Jenkins; Amit Walia.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 10/22/2021.). Hearing to be held on 11/3/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2864</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/28/2021	<p><u>2879</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2812</u> Order on motion to compel). (Draper, Douglas)</p>
09/28/2021	<p><u>2880</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2879</u> Statement of issues on appeal). Appellee designation due by 10/12/2021. (Draper, Douglas)</p>
09/29/2021	<p><u>2882</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)<u>2880</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2879</u> Statement of issues on appeal). Appellee designation due by 10/12/2021.) Responses due by 10/1/2021. (Blanco, J.)</p>
09/29/2021	<p><u>2883</u> Certificate of service re: Motion of CPCM, LLC for Allowance and Payment of Administrative Expenses of Rank-and-File Employees, CPCM, LLC for Allowance and Payment of Administrative Expense Claims, and Amended Proof of Claim for Scott Ellington [Claim No. 251] filed by Interested Party CPCM, LLC (RE: related document(s)<u>2868</u> Application for administrative expenses <i>for rank-and-file employees</i>, <u>2869</u> Application for administrative expenses). (Smith, Frances)</p>
09/29/2021	<p><u>2884</u> Certificate of service re: <i>1) First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 Through May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2870</u> Notice (<i>First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2871</u> Application for compensation (<i>Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 through May 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$51,697.50, Expenses: \$3,556.31. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)</p>
09/29/2021	<p><u>2885</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . Transmitted: Volume 1, Mini Record. Number of appellant volumes: 61 Number of appellee volumes: 1. Civil Case Number: 3:21-CV-01979-S (RE: related document(s)<u>2712</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2660</u> Memorandum of opinion). (Blanco, J.)</p>

09/29/2021	<u>2886</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-01979-S (RE: related document(s) <u>2712</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Blanco, J.)
09/29/2021	<u>2887</u> Adversary case 21-03067. ORDER REFERRING CASE NUMBER 21-CV-0842-B from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division. Complaint by Charitable DAF Fund, LP , CLO Holdco, Ltd. against Highland Capital Management, LP , Highland HCF Advisor Ltd , Highland CLO Funding, Ltd. . Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Docket Sheet from 3:20-cv-0842-B). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, M.)
09/30/2021	<u>2891</u> Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 10/14/2021. (Ecker, C.)
09/30/2021	<u>2892</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2880</u> Appellant designation). (Draper, Douglas)
10/01/2021	<u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/01/2021	<u>2894</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ). (Annable, Zachery)
10/01/2021	<u>2895</u> Declaration re: ( <i>Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
10/01/2021	<u>2896</u> BNC certificate of mailing. (RE: related document(s) <u>2882</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>2880</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2879</u> Statement of issues on appeal). Appellee designation due by 10/12/2021.) Responses due by 10/1/2021. (Blanco, J.)) No. of Notices: 1. Notice Date 10/01/2021. (Admin.) (Entered: 10/02/2021)
10/05/2021	<u>2897</u> Certificate of service re: (Supplemental) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)).

	filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/05/2021	<u>2898</u> Motion to withdraw as attorney (Vedder Price P.C. and its attorneys) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Taylor, Clay)
10/06/2021	<u>2899</u> Certificate of service re: 1) Highlands Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; 2) Highlands Memorandum of Law in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 3) Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2894</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ). filed by Debtor Highland Capital Management, L.P., <u>2895</u> Declaration re: ( <i>Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2021	<u>3661</u> DISTRICT COURT ORDER: It is therefore ORDERED that the above-styled appeal shall be ABATED and ADMINISTRATIVELY CLOSED pending the resolution of NexPoint Advisors, L.P. et al. v. Highland Capital Management, L.P., No. 21-10449 (5th Cir. 2021), without prejudice to it being reopened upon a motion by any party or to enter a judgment. (Ordered by Judge Karen Gren Scholer on 10/6/2021) (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). 3:21-cv-01585-S Entered on 10/6/2021 (Whitaker, Sheniqua) MODIFIED text on 9/12/2023 (Whitaker, Sheniqua). (Entered: 02/02/2023)
10/07/2021	<u>2900</u> Motion to continue hearing on (related documents <u>2893</u> Motion to compel) ( <i>Unopposed Motion to Continue the Hearing on Highland's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/07/2021	<u>2901</u> Order granting motion to continue hearing on (related document # <u>2900</u> ) (related documents Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ) <i>Hearing to be held on 11/30/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2893</u>, Entered on 10/7/2021. (Nunns, Tracy)</i>
10/08/2021	<u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021. (Hoffman, Juliana)
10/08/2021	<u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021. (Hoffman, Juliana)

10/08/2021	<u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021. (Hoffman, Juliana)</i>
10/08/2021	<u>2905</u> Application for compensation ( <i>Eighteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from June 1, 2021 through June 30, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$53,145.00, Expenses: \$7,788.92. Filed by Other Professional Hayward PLLC (Annable, Zachery)
10/08/2021	<u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021. (Pomerantz, Jeffrey)
10/08/2021	<u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021. (Pomerantz, Jeffrey)
10/08/2021	<u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021. (Pomerantz, Jeffrey)
10/08/2021	<u>2909</u> Application for compensation ( <i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from July 1, 2021 through August 11, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 7/1/2021 to 8/11/2021, Fee: \$49,947.50, Expenses: \$3,965.32. Filed by Other Professional Hayward PLLC (Annable, Zachery)
10/08/2021	<u>2910</u> Application for compensation ( <i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC (Annable, Zachery)
10/11/2021	<u>2911</u> Application for compensation ( <i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
10/11/2021	<u>2912</u> Certificate of service re: (Supplemental) re First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2870</u> Notice ( <i>First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/12/2021	

	<p><u>2913</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2893</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. (<i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2893</u>, (Annable, Zachery)</p>
10/12/2021	<p><u>2914</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2840</u> Notice of appeal, <u>2841</u> Amended notice of appeal, <u>2879</u> Statement of issues on appeal). (Annable, Zachery)</p>
10/12/2021	<p><u>2915</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, (Annable, Zachery)</p>
10/12/2021	<p><u>2916</u> Clerk's correspondence requesting File an amended appellee designation from attorney for appellee. (RE: related document(s)<u>2914</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2840</u> Notice of appeal, <u>2841</u> Amended notice of appeal, <u>2879</u> Statement</p>

	of issues on appeal.) Responses due by 10/14/2021. (Blanco, J.)
10/12/2021	<u>2917</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2914</u> Appellee designation). (Annable, Zachery)
10/13/2021	<u>2918</u> Order granting sixth interim application for compensation (related document # <u>2611</u> ) granting for FTI Consulting, Inc., fees awarded: \$339167.25, expenses awarded: \$0.00 Entered on 10/13/2021. (Nunns, Tracy)
10/13/2021	<u>2919</u> Order granting unopposed motion to withdraw as attorneys (attorney David L. Kane; Douglas J. Lipke; William W. Thorsness; Thomas P. Cimino and Michael E. Eidelman terminated). (related document # <u>2898</u> ) Entered on 10/13/2021. (Nunns, Tracy)
10/13/2021	<u>2921</u> Certificate of service re: 1) Unopposed Motion to Continue the Hearing on Highlands Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Order Granting Unopposed Motion to Continue the Hearing on Highland's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2900</u> Motion to continue hearing on (related documents <u>2893</u> Motion to compel) ( <i>Unopposed Motion to Continue the Hearing on Highland's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2901</u> Order granting motion to continue hearing on (related document <u>2900</u> ) (related documents Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ) <i>Hearing to be held on 11/30/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2893</u>, Entered on 10/7/2021.</i> ). (Kass, Albert)
10/13/2021	<u>2922</u> Certificate of service re: Documents Served on October 8, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021. filed by Other Professional Teneo Capital, LLC, <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2905</u> Application for compensation ( <i>Eighteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from June 1, 2021 through June 30, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$53,145.00, Expenses: \$7,788.92. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021. filed by Debtor Highland Capital Management, L.P., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11,</i>

	<p>2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021. filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021. filed by Consultant Mercer (US) Inc., <u>2909</u> Application for compensation (<i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from July 1, 2021 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 7/1/2021 to 8/11/2021, Fee: \$49,947.50, Expenses: \$3,965.32. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)</p>
10/14/2021	<p><u>2923</u> Notice of Case Status filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s)<u>2891</u> Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s)<u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 10/14/2021. (Ecker, C.)). (Drawhorn, Lauren)</p>
10/15/2021	<p><u>2924</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s)<u>2858</u> Application for compensation (<i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from April 1, 2021 through April 30, 2021</i>) for Hayward PLLC, Debtor's A). (Annable, Zachery)</p>
10/15/2021	<p><u>2925</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . Transmitted: Volume 1, Mini Record. Number of appellant volumes: 4 Number of appellee volumes: 2. Civil Case Number: 3:21-CV-02268-S (RE: related document(s)<u>2841</u> First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2840</u> Notice of appeal) (Blanco, J.)</p>
10/15/2021	<p><b>2926 SEALED document regarding: Appendix in Support of HCRE Partners, LLC Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP per court order</b> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)<u>2505</u> Order on motion to seal). (Drawhorn, Lauren)</p>
10/15/2021	<p><u>2927</u> Response opposed to (related document(s): <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. (<i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and filed by Debtor Highland Capital Management, L.P.</i>) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)</p>
10/15/2021	<p><u>2928</u> Support/supplemental document <i>Supplemental Appendix ISO NREP Response and Brief in Opposition to Debtor's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)<u>2927</u> Response). (Drawhorn, Lauren)</p>
10/15/2021	<p><u>2929</u> Notice of docketing COMPLETE record on appeal. (RE: related document(s)<u>2841</u> First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2840</u> Notice of appeal). (Attachments: # 1 Exhibit A)) Civil case 3:21-cv-02268-S (Whitaker, Sheniqua)</p>

10/15/2021	<u>2930</u> Motion to appear pro hac vice for Robert Loigman. Fee Amount \$100 Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (Montgomery, Paige)
10/15/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29058450, amount \$ 100.00 (re: Doc# <u>2930</u> ). (U.S. Treasury)
10/15/2021	<u>2931</u> Motion to appear pro hac vice for Alexandre J. Tschumi. Fee Amount \$100 Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (Montgomery, Paige)
10/15/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29058482, amount \$ 100.00 (re: Doc# <u>2931</u> ). (U.S. Treasury)
10/15/2021	<u>2932</u> Response unopposed to (related document(s): <u>2819</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) <i>No Opposition to Granting Objection to Proof of Claim Number 177 Filed by the Dugaboy Investment Trust on April 23, 2020 [Dkt. 2819]</i> filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/15/2021	<u>2933</u> Response unopposed to (related document(s): <u>2796</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) <i>Limited Response and Consent to Objection to Proof of Claim 131 Filed by The Dugaboy Investment Trust on April 8, 2020</i> filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/15/2021	<u>2934</u> Adversary case 21-03076. Complaint by Marc Kirschner against James D. Dondero, Mark Okada, Scott Ellington, Isaac Leventon, Grant James Scott III, Frank Waterhouse, STRAND ADVISORS, INC, NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P., DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST, GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST, Hunter Mountain Investment Trust, MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #1, MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST EXEMPT TRUST #2, CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., RAND PE FUND I, LP, SERIES 1, MASSAND CAPITAL, LLC, MASSAND CAPITAL, INC., SAS ASSET RECOVERY, LTD, CPCM, LLC. Fee Amount \$350. Nature(s) of suit: 13 (Recovery of money/property \$548 fraudulent transfer. 14 (Recovery of money/property – other). 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 81 (Subordination of claim or interest). (Montgomery, Paige) MODIFIED TO ADD NATURE OS SUIT AND CORRECT DEFENDANT NAME on 10/18/2021 (Ecker, C.). Modified on 10/18/2021 (Ecker, C.).
10/18/2021	<u>2935</u> Motion to appear pro hac vice for Frank Grese. Fee Amount \$100 Filed by Interested Party CPCM, LLC (Smith, Frances)
10/18/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29061543, amount \$ 100.00 (re: Doc# <u>2935</u> ). (U.S. Treasury)
10/18/2021	<u>2936</u> Certificate of no Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2871</u> Application for compensation ( <i>Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from May 1, 2021 through May 31, 2021</i> ) for Hayward PLLC, Debtor's Att). (Annable, Zachery)

10/18/2021	Adversary case 3:20–ap–3195 closed Pursuant to LBR 9070–1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60–day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60–day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
10/18/2021	<p><u>2937</u> Certificate of service re: Documents Served on October 12, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2913</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2893</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. (<i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2893</u>, filed by Debtor Highland Capital Management, L.P., <u>2914</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2840</u> Notice of appeal, <u>2841</u> Amended notice of appeal, <u>2879</u> Statement of issues on appeal). filed by Debtor Highland Capital Management, L.P., <u>2917</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2914</u> Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/18/2021	<p><u>2938</u> Certificate of service re: Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2915</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty–First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty–First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US)</p>

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	<p>Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/19/2021	<p><u>2939</u> Motion for leave (<i>Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation</i>) (related document(s) <u>2856</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. Objections due by 11/9/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)</p>
10/19/2021	<p><u>2940</u> WITHDRAWN at # <u>3340</u>. Amended Motion to disallow claims (<i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i>) (related document(s):<u>2857</u>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) MODIFIED and terminated on 5/17/2022 (Ecker, C.).</p>
10/20/2021	<p><u>2941</u> Order granting application for compensation (related document # <u>2585</u>) granting for Official Committee of Unsecured Creditors, fees awarded: \$1527522.75, expenses awarded: \$32957.78 Entered on 10/20/2021. (Okafor, Marcey)</p>
10/20/2021	<p><u>2942</u> Order granting motion to appear pro hac vice adding Frank Grese for CPCMC, LLC (related document # <u>2935</u>) Entered on 10/20/2021. (Okafor, Marcey)</p>
10/20/2021	<p><u>2943</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2021 through August 11, 2021</i>) filed by Development Specialists, Inc.(RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery) MODIFIED TO CORRECT PARTY FILER on 10/21/2021 (Ecker, C.).</p>
10/21/2021	<p><u>2944</u> Agreed Motion for ex parte relief <i>effectuating Stipulation and Order and Disbursing Registry Funds to CLO HoldCo</i> Filed by Interested Party CLO Holdco, Ltd. (Attachments: # <u>1</u> Proposed Order) (Phillips, Louis)</p>
10/21/2021	<p><u>2945</u> Certificate of service re: (Supplemental) re 1) Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals; and 2) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2700</u> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2915</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP,</p>

	<p>Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/21/2021	<u>2946</u> Order effectuating stipulation and order and disbursing registry funds to CLO Holdco (related document # <u>2944</u> ) Entered on 10/21/2021. (Okafor, Marcey)
10/21/2021	<u>2947</u> Reply to (related document(s): <u>2933</u> Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/21/2021	<u>2948</u> Reply to (related document(s): <u>2932</u> Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/21/2021	<u>2949</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 09/30/2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
10/22/2021	<u>2950</u> Order granting motion to appear pro hac vice adding Robert S. Loigman for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (related

	document # <u>2930</u> ) Entered on 10/22/2021. (Rielly, Bill)
10/22/2021	<u>2951</u> Order granting motion to appear pro hac vice adding Alexandre J. Tschumi for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (related document # <u>2931</u> ) Entered on 10/22/2021. (Rielly, Bill)
10/22/2021	<u>2952</u> Reply to (related document(s): <u>2927</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/22/2021	<u>2953</u> Certificate of service re: 1) Amended Motion of the Reorganized Debtor for an Order Authorizing Entry Into an Amended and Restated Employee Stipulation; and 2) Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2939</u> Motion for leave ( <i>Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation</i> ) (related document(s) <u>2856</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. Objections due by 11/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/22/2021	<u>2954</u> Witness and Exhibit List ( <i>Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on October 25, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2819</u> Objection to claim). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)
10/22/2021	<u>2955</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2942</u> Order granting motion to appear pro hac vice adding Frank Grese for CPCM, LLC (related document <u>2935</u> ) Entered on 10/20/2021.) No. of Notices: 1. Notice Date 10/22/2021. (Admin.)
10/24/2021	<u>2956</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2950</u> Order granting motion to appear pro hac vice adding Robert S. Loigman for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (related document <u>2930</u> ) Entered on 10/22/2021.) No. of Notices: 1. Notice Date 10/24/2021. (Admin.)
10/24/2021	<u>2957</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2951</u> Order granting motion to appear pro hac vice adding Alexandre J. Tschumi for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (related document <u>2931</u> ) Entered on 10/22/2021.) No. of Notices: 1. Notice Date 10/24/2021. (Admin.)
10/25/2021	<u>2958</u> Reply to (related document(s): <u>2947</u> Reply filed by Debtor Highland Capital Management, L.P.) <i>Resonse to Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 131 filed by The Dugaboy Investment Trust on April 8, 2020 with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/25/2021	<u>2959</u> Reply to (related document(s): <u>2948</u> Reply filed by Debtor Highland Capital Management, L.P.) <i>Response to Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 177 filed by The Dugaboy Investment Trust on April 23, 2020 with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
10/25/2021	<u>2960</u> Hearing held on 10/25/2021. (RE: related document(s) <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo and J. Pomeranz for Reorganized Debtor; D. Draper for

	Dugaboy (with N. Dondero). Nonevidentiary hearing. Agreed Order disallowing claim will be submitted.) (Edmond, Michael)
10/25/2021	2961 Hearing held on 10/25/2021. (RE: related document(s) <a href="#">2819</a> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo and J. Pomeranz for Reorganized Debtor; D. Draper for Dugaboy (with N. Dondero). Nonevidentiary hearing. Agreed Order disallowing claim will be submitted.) (Edmond, Michael)
10/25/2021	<a href="#">2962</a> PDF with attached Audio File. Court Date & Time [10/25/2021 01:27:43 PM]. File Size [ 2701 KB ]. Run Time [ 00:11:36 ]. (admin).
10/25/2021	<a href="#">2963</a> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2021 Through August 11, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">2943</a> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2021 through August 11, 2021</i> ) filed by Development Specialists, Inc.(RE: related document(s) <a href="#">853</a> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <a href="#">775</a> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery) MODIFIED TO CORRECT PARTY FILER on 10/21/2021 (Ecker, C.). filed by Financial Advisor Development Specialists, Inc.). (Kass, Albert)
10/25/2021	<a href="#">3660</a> DISTRICT COURT Order consolidating cases: Member case(s) 3:21–CV–01979–S consolidated with lead case 3:21–CV–01974–X. James Dondero added to case pursuant to consolidation. (RE: related document(s) <a href="#">2762</a> Notice of docketing notice of appeal/record, <a href="#">2767</a> Notice of docketing notice of appeal/record). Entered on 10/25/2021 (Whitaker, Sheniqua) (Entered: 02/02/2023)
10/27/2021	<a href="#">2964</a> Certificate of service re: 1) Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020; and 2) Highland Capital Management, L.P.'s Reply in Support of its Objection to Proof of Claim Number 177 Filed by The Dugaboy Investment Trust on April 23, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">2947</a> Reply to (related document(s): <a href="#">2933</a> Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">2948</a> Reply to (related document(s): <a href="#">2932</a> Response to objection to claim filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/27/2021	<a href="#">2965</a> Order regarding objection to claim #177 filed by The Dugaboy Investment Trust (RE: related document(s) <a href="#">2819</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021 (Okafor, Marcey) Modified text on 10/27/2021 (Okafor, Marcey).
10/27/2021	<a href="#">2966</a> Order regarding objection to claim #131 filed by The Dugaboy Investment Trust (RE: related document(s) <a href="#">2796</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021 (Okafor, Marcey)
10/27/2021	<a href="#">2967</a> Certificate of service re: 1) Highland's Reply in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on October 25, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">2952</a> Reply to (related document(s): <a href="#">2927</a> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">2954</a> Witness and Exhibit List ( <i>Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on October 25, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related

	document(s) <u>2819</u> Objection to claim). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/28/2021	<u>2968</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2864</u> Objection to claim). (Annable, Zachery)
11/01/2021	<u>2969</u> Order sustaining reorganized debtor's fourth omnibus objection to certain amended and superseded claims; and no-liability claims (RE: related document(s) <u>2864</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/1/2021 (Okafor, Marcey)
11/01/2021	<u>2970</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2905</u> Application for compensation ( <i>Eighteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from June 1, 2021 through June 30, 2021</i> ) for Hayward PLLC, Debtor's At). (Annable, Zachery)
11/01/2021	<u>2971</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2909</u> Application for compensation ( <i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from July 1, 2021 through August 11, 2021</i> ) for Hayward PLLC, Debtor's). (Annable, Zachery)
11/01/2021	<u>2972</u> Certificate of service re: 1) Order re: Objection to Proof of Claim Number 177 Filed by The Dugaboy Investment Trust on April 23, 2020; and 2) Order re: Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2965</u> Order regarding objection to claim #177 filed by The Dugaboy Investment Trust (RE: related document(s) <u>2819</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021 (Okafor, Marcey) Modified text on 10/27/2021., <u>2966</u> Order regarding objection to claim #131 filed by The Dugaboy Investment Trust (RE: related document(s) <u>2796</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/27/2021). (Kass, Albert)
11/01/2021	<u>2973</u> Certificate of service re: (Supplemental) re Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2915</u> Omnibus Notice of hearing ( <i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2872</u> Application for compensation ( <i>FINAL</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application</i>

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	<p><i>of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></i></p>
11/01/2021	<p><u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)</p>
11/02/2021	<p><u>2975</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>2889</u> Motion to Strike (related document(s) <u>2852</u> Application for compensation) Filed by Other Professional Eastern Point Trust Company, Inc.) Responses due by 11/9/2021. (Ecker, C.)</p>
11/02/2021	<p><u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios;</p>

	Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021 (Rielly, Bill).
11/02/2021	<u>2977</u> Omnibus Objection to (related document(s): <u>2872</u> Application for compensation ( <i>FINAL</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. filed by Financial Advisor FTI Consulting, Inc., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. filed by Other Professional Teneo Capital, LLC, <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$21 filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1</i> filed by Debtor Highland Capital Management, L.P., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns</i> filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc</i> filed by Consultant Mercer (US) Inc., <u>2910</u> Application for compensation ( <i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1 filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation ( <i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i> ) for Deloitte Tax LLP, Other filed by Other Professional Deloitte Tax LLP) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # 1 Exhibit A: Declaration of Bruce A. Markell) (Jain, Kristin)
11/03/2021	<u>2978</u> Motion to appear pro hac vice for Samuel A. Schwartz. Fee Amount \$100 Filed by Interested Party NexPoint Advisors, L.P. (Jain, Kristin)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29100285, amount \$ 100.00 (re: Doc# <u>2978</u> ). (U.S. Treasury)
11/03/2021	<u>2979</u> Motion to appear pro hac vice for Athanasios E. Agelakopoulos. Fee Amount \$100 Filed by Interested Party NexPoint Advisors, L.P. (Jain, Kristin)
11/03/2021	<u>2980</u> Motion to appear pro hac vice for Emily D. Anderson. Fee Amount \$100 Filed by Interested Party NexPoint Real Estate Advisors, L.P. (Jain, Kristin)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29100347, amount \$ 100.00 (re: Doc# <u>2979</u> ). (U.S. Treasury)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29100347, amount \$ 100.00 (re: Doc#

	<u>2980</u> ). (U.S. Treasury)
11/03/2021	<u>2981</u> Motion to appear pro hac vice for Jordan A. Kroop. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Hayward, Melissa)
11/03/2021	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29100707, amount \$ 100.00 (re: Doc# <u>2981</u> ). (U.S. Treasury)
11/04/2021	<u>2982</u> Certificate of service re: Order Sustaining Reorganized Debtors Fourth Omnibus Objection to Certain (A) Amended and Superseded Claims; and (B) No-Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2969</u> Order sustaining reorganized debtor's fourth omnibus objection to certain amended and superseded claims; and no-liability claims (RE: related document(s) <u>2864</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/1/2021). (Kass, Albert)
11/04/2021	<u>2983</u> Certificate of service re: Reorganized Debtor's Amended Supplemental Omnibus Objection to Certain Employee Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/04/2021	<u>2984</u> BNC certificate of mailing. (RE: related document(s) <u>2975</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>2889</u> Motion to Strike (related document(s) <u>2852</u> Application for compensation) Filed by Other Professional Eastern Point Trust Company, Inc.) Responses due by 11/9/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 11/04/2021. (Admin.)
11/05/2021	<u>2985</u> Order granting motion to appear pro hac vice adding Samuel A. Schwartz for NexPoint Advisors, L.P. (related document # <u>2978</u> ) Entered on 11/5/2021. (Okafor, Marcey)
11/05/2021	<u>2986</u> Order granting motion to appear pro hac vice adding Athanasios E. Agelakopoulos for NexPoint Advisors, L.P. (related document # <u>2979</u> ) Entered on 11/5/2021. (Okafor, Marcey)

11/05/2021	<u>2987</u> Order granting motion to appear pro hac vice adding Emily D. Anderson for NexPoint Advisors, L.P. (related document # <u>2980</u> ) Entered on 11/5/2021. (Okafor, Marcey)
11/05/2021	<u>2988</u> Reply to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	<u>2989</u> Order granting motion to appear pro hac vice adding Jordan A. Kroop for Highland Capital Management, L.P. (related document # <u>2981</u> ) Entered on 11/5/2021. (Okafor, Marcey)
11/05/2021	<u>2990</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 113 Filed by The Dugaboy Investment Trust as Successor-in-Interest to The Canis Major Trust</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	<u>2991</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	<u>2992</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non-Exempt Trust No. 1 Individually and as Successor-in-Interest to The Canis Major Trust</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	<u>2993</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non-Exempt Trust No. 2 Individually and as Successor-in-Interest to The Canis Major Trust</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/05/2021	<u>2994</u> Response opposed to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
11/07/2021	<u>2995</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2985</u> Order granting motion to appear pro hac vice adding Samuel A. Schwartz for NexPoint Advisors, L.P. (related document <u>2978</u> ) Entered on 11/5/2021.) No. of Notices: 1. Notice Date 11/07/2021. (Admin.)
11/07/2021	<u>2996</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2986</u> Order granting motion to appear pro hac vice adding Athanasios E. Agelakopoulos for NexPoint Advisors, L.P. (related document <u>2979</u> ) Entered on 11/5/2021.) No. of Notices: 1. Notice Date 11/07/2021. (Admin.)
11/07/2021	<u>2997</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2987</u> Order granting motion to appear pro hac vice adding Emily D. Anderson for NexPoint Advisors, L.P. (related document <u>2980</u> ) Entered on 11/5/2021.) No. of Notices: 1. Notice Date 11/07/2021. (Admin.)
11/09/2021	<u>2998</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>2868</u> Application for administrative expenses <i>for rank-and-file employees</i> Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order), <u>2869</u> Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order)) Responses due by 11/23/2021. (Ecker, C.)
11/09/2021	<u>2999</u> Adversary case 21-03082. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Adversary Cover Sheet). Nature(s) of

	suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)
11/09/2021	<u>3000</u> Objection to claim(s) of Creditor(s) Jean–Paul Sevilla.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Montgomery, Paige)
11/09/2021	<u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean–Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # <u>1</u> Exhibit A) (Montgomery, Paige)
11/09/2021	<u>3002</u> Objection to claim(s) of Creditor(s) Hunter Covitz.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Montgomery, Paige)
11/10/2021	<u>3003</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2939</u> Motion for leave ( <i>Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation</i> ) (related document(s) <u>2856</u> Motion for leave)). (Annable, Zachery)
11/10/2021	<u>3004</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: 09/30/2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post–Confirmation Report) (Annable, Zachery)
11/10/2021	<u>3005</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: 09/30/2021 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post–Confirmation Report) (Annable, Zachery)
11/10/2021	<u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021. (Annable, Zachery)
11/10/2021	<u>3007</u> Order approving stipulation and agreed order authorizing withdrawal of proof of claim 113 filed by The Dugaboy Investment Trust as Successor–in–Interest to The Canis Major Trust (RE: related document(s) <u>2990</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)
11/10/2021	<u>3008</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust(RE: related document(s) <u>2991</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)
11/10/2021	<u>3009</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non–Exempt Trust No. 1 Individually and as Successor–in–Interest to The Canis Major Trust (RE: related document(s) <u>2992</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)
11/10/2021	<u>3010</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non–Exempt Trust No. 2 Individually and as Successor–in–Interest to The Canis Major Trust (RE: related document(s) <u>2993</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021 (Okafor, Marcey)

11/10/2021	<p><u>3011</u> INCORRECT ENTRY: Filed in AP at docket #69. Motion to stay pending appeal Amended (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Creditor CLO Holdco, Ltd., Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (Attachments: # <u>1</u> Exhibit A–Motion to Withdraw Reference) (Bridges, Jonathan) MODIFIED and terminated on 1/10/2022 (Ecker, C.).</p>
11/11/2021	<p><u>3012</u> Certificate of service re: Various Documents Served on November 5, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2988</u> Reply to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2990</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 113 Filed by The Dugaboy Investment Trust as Successor–in–Interest to The Canis Major Trust</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2991</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2992</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non–Exempt Trust No. 1 Individually and as Successor–in–Interest to The Canis Major Trust</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2993</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non–Exempt Trust No. 2 Individually and as Successor–in–Interest to The Canis Major Trust</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/11/2021	<p><u>3013</u> Certificate of service re: (Supplemental) re 1) First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; 2) Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims; and 3) Reorganized Debtor's Amended Supplemental Omnibus Objection to Certain Employee Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.), <u>2870</u> Notice (<i>First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) filed by Debtor Highland Capital Management, L.P.).</p>

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	(Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2021	<p><u>3014</u> Certificate of service re: (Supplemental) Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2915</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/12/2021	<p><u>3015</u> Supplemental Response opposed to (related document(s): <u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. filed by Financial Advisor FTI Consulting, Inc., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo</p>

	<p>Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. filed by Other Professional Teneo Capital, LLC, <a href="#">2904</a> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$21 filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">2906</a> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1</i> filed by Debtor Highland Capital Management, L.P., <a href="#">2907</a> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns</i> filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, <a href="#">2908</a> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc</i> filed by Consultant Mercer (US) Inc., <a href="#">2910</a> Application for compensation <i>(Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1</i> filed by Other Professional Hayward PLLC, <a href="#">2911</a> Application for compensation <i>(Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other</i> filed by Other Professional Deloitte Tax LLP) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <a href="#">1</a> Exhibit Declaration of Joseph Tiano, Chief Executive Officer of Legal Decoder) (Jain, Kristin)</p>
11/12/2021	<p><a href="#">3016</a> Certificate of service re: (Supplemental) 1) Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.; and 2) Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">2700</a> Notice (<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1943</a> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<a href="#">1472</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <a href="#">1808</a> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <a href="#">2915</a> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2872</a> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <a href="#">2902</a> Application for compensation <i>The Twenty-First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <a href="#">2903</a> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <a href="#">2904</a> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <a href="#">2906</a> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <a href="#">2907</a> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for</i></i></p>

	<p><i>Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></i></p>
11/13/2021	<p><u>3017</u> Witness and Exhibit List (<i>Reorganized Debtor's Witness and Exhibit List with Respect to Hearing on Final Fee Applications to Be Held on November 17, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1, 2907</i> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns, 2908</i> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc, 2910</i> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other). (Annable, Zachery)</p>
11/15/2021	<p><u>3018</u> Scheduling Order continuing hearing (RE: related document(s)<u>2872</u> Application for compensation filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>2902</u> Application for compensation filed by Financial Advisor FTI Consulting, Inc., <u>2903</u> Application for compensation filed by Other Professional Teneo Capital, LLC, <u>2904</u> Application for compensation filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2906</u> Application for compensation filed by Debtor Highland Capital Management, L.P., <u>2907</u> Application for compensation filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, <u>2908</u> Application for compensation filed by Consultant Mercer (US) Inc., <u>2910</u> Application for compensation filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2904</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2902</u> and for <u>2903</u> and for <u>2907</u> and for <u>2910</u> and for <u>2906</u>, Entered on 11/15/2021 (Okafor, Marcey)</p>
11/15/2021	<p><u>3019</u> Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation (related document #</p>

	<u>2939</u> ) Entered on 11/15/2021. (Okafor, Marcey)
11/16/2021	<u>3020</u> Supplemental Reply to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>3015</u> Response filed by Interested Party NexPoint Advisors, L.P.) ( <i>Supplemental Reply of Debtor Professionals to Supplemental Omnibus Response of NexPoint Advisors, L.P., to Final Fee Applications Submitted by Various Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2021	<u>3023</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 17, 2021 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2021	<u>3024</u> Supplemental Response opposed to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
11/16/2021	<u>3025</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3006</u> , (Annable, Zachery)
11/16/2021	<u>3026</u> Certificate of service re: Various Documents Served on November 10, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3000</u> Objection to claim(s) of Creditor(s) Jean-Paul Sevilla.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>3002</u> Objection to claim(s) of Creditor(s) Hunter Covitz.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021. filed by Debtor Highland Capital Management, L.P., <u>3007</u> Order approving stipulation and agreed order authorizing withdrawal of proof of claim 113 filed by The Dugaboy Investment Trust as Successor-in-Interest to The Canis Major Trust (RE: related document(s) <u>2990</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021, <u>3008</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 120 Filed by The Get Good Trust(RE: related document(s) <u>2991</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021, <u>3009</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 128 Filed by The Get Good Non-Exempt Trust No. 1 Individually and as Successor-in-Interest to The Canis Major Trust (RE: related document(s) <u>2992</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021, <u>3010</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proof of Claim 129 Filed by The Get Good Non-Exempt Trust No. 2 Individually and as Successor-in-Interest to The Canis Major Trust (RE: related document(s) <u>2993</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 11/10/2021). (Kass, Albert)
11/16/2021	<u>3027</u> Certificate of service re: Notice of Agenda of Matters Scheduled for Hearing on November 17, 2021 at 9:30 a.m. (Central Time) Filed by Claims Agent Kurtzman Carson

	Consultants LLC (related document(s) <a href="#">3023</a> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 17, 2021 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/17/2021	<a href="#">3028</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">3019</a> Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation (related document <a href="#">2939</a> ) Entered on 11/15/2021.) No. of Notices: 1. Notice Date 11/17/2021. (Admin.)
11/17/2021	<a href="#">3029</a> Court admitted exhibits date of hearing November 17, 2021 (RE: related document(s) <a href="#">2872</a> Application for compensation (FINAL) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <a href="#">2902</a> Application for compensation The Twenty–First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <a href="#">2903</a> Application for compensation Second Consolidated Monthly and Final Fee Application for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <a href="#">2904</a> Application for compensation Twenty–First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <a href="#">2906</a> Application for compensation Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <a href="#">2907</a> Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <a href="#">2908</a> Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <a href="#">2910</a> Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, filed by Other Professional Hayward PLLC, <a href="#">2911</a> Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other Professional, filed by Other Professional Deloitte Tax LLP) (COURT ADMITTED ALL OF THE EXHIBIT'S THAT APPEAR ON DOC. #3017 BY JEFFREY POMERANTZ), (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3033 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2872</a> Application for compensation (FINAL) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, (Appearances: G. Hesse for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3034 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2902</a> Application for compensation The Twenty–First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, filed by Financial Advisor FTI Consulting, Inc., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized

	Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3035 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2903</a> Application for compensation Second Consolidated Monthly and Final Fee Application for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, filed by Other Professional Teneo Capital, LLC., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3036 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2904</a> Application for compensation Twenty-First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3037 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2906</a> Application for compensation Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, filed by attorney Jeffrey Nathan Pomerantz.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3038 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2907</a> Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP., (Appearances: T. Silva for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3039 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2908</a> Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, filed by Consultant Mercer (US) Inc. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	3040 Hearing held on 11/17/2021. (RE: related document(s) <a href="#">2910</a> Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, filed by Other Professional Hayward PLLC) (Appearances: Z. Annabel for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and

	objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/17/2021	<u>3041</u> Hearing held on 11/17/2021. (RE: related document(s) <u>2911</u> Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Deloitte Tax LLP) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2021)
11/18/2021	<u>3030</u> Request for transcript regarding a hearing held on 11/17/2021. The requested turn-around time is hourly. (Edmond, Michael)
11/18/2021	<u>3031</u> <i>Withdrawal of Application for Allowance of Administrative Expense Claim</i> filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>1888</u> Application for administrative expenses). (Drawhorn, Lauren)
11/18/2021	<u>3032</u> Response opposed to (related document(s): <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCM, LLC. (Attachments: # <u>1</u> Exhibit A) (Soderlund, Eric)
11/18/2021	<u>3042</u> Certificate of service re: CPCM, LLCs Objection to Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 filed by Interested Party CPCM, LLC (RE: related document(s) <u>3032</u> Response). (Soderlund, Eric)
11/18/2021	<u>3043</u> Certificate of service re: 1) Reorganized Debtor's Witness and Exhibit List with Respect to Hearing on Final Fee Applications to be Held on November 17, 2021; 2) Scheduling Order; and 3) Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry Into an Amended and Restated Employee Stipulation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3017</u> Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Hearing on Final Fee Applications to Be Held on November 17, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2872</u> Application for compensation ( <i>FINAL</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 1, 2907 Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Couns, 2908 Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Merc, 2910 Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/1, 2911 Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other). filed by Debtor Highland Capital Management, L.P., <u>3018</u> Scheduling Order continuing hearing (RE: related document(s)<u>2872</u> Application for compensation filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>2902</u> Application for compensation filed by Financial Advisor FTI Consulting, Inc., <u>2903</u> Application for compensation filed by Other Professional Teneo Capital, LLC, <u>2904</u></i>

	<p><i>Application for compensation filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2906</u> Application for compensation filed by Debtor Highland Capital Management, L.P., <u>2907</u> Application for compensation filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, <u>2908</u> Application for compensation filed by Consultant Mercer (US) Inc., <u>2910</u> Application for compensation filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2904</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2902</u> and for <u>2903</u> and for <u>2907</u> and for <u>2910</u> and for <u>2906</u>. Entered on 11/15/2021, <u>3019</u> Order Granting Amended Motion of the Reorganized Debtor for an Order Authorizing Entry into an Amended and Restated Employee Stipulation (related document <u>2939</u>) Entered on 11/15/2021.). (Kass, Albert)</i></p>
11/18/2021	<p><u>3044</u> Certificate of service re: 1) Supplemental Reply of Debtor Professionals to Supplemental Omnibus Response of NexPoint Advisors, L.P., to Final Fee Applications Submitted by Various Estate Professionals; 2) Supplemental Response of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, to Supplemental Omnibus Response of NexPoint Advisors, L.P., Creditor and Party in Interest Pursuant to 11 U.S.C. § 330(a) and Federal Rule of Bankruptcy Procedure 2016 to Final Fee Applications Submitted by Various Estate Professionals; 3) Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3020</u> Supplemental Reply to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>3015</u> Response filed by Interested Party NexPoint Advisors, L.P.) (<i>Supplemental Reply of Debtor Professionals to Supplemental Omnibus Response of NexPoint Advisors, L.P., to Final Fee Applications Submitted by Various Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3024</u> Supplemental Response opposed to (related document(s): <u>2977</u> Objection filed by Interested Party NexPoint Advisors, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>3025</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3006</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/19/2021	<p><u>3045</u> Transcript regarding Hearing Held 11/17/2021 (68 pages) RE: Final Fee Applications. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/17/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3033 Hearing held on 11/17/2021. (RE: related document(s)<u>2872</u> Application for compensation (FINAL) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, (Appearances: G. Hesse for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3034 Hearing held on 11/17/2021. (RE: related document(s)<u>2902</u> Application for compensation The Twenty-First and Final Fee Application for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, filed by Financial Advisor FTI Consulting, Inc., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3035 Hearing held on 11/17/2021. (RE: related document(s)<u>2903</u> Application for compensation Second Consolidated Monthly and Final Fee Application for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, filed by Other Professional Teneo Capital, LLC., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections</p>

	<p>overruled. Counsel to upload order.), 3036 Hearing held on 11/17/2021. (RE: related document(s)<a href="#">2904</a> Application for compensation Twenty-First Monthly and Final Fee Application of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3037 Hearing held on 11/17/2021. (RE: related document(s)<a href="#">2906</a> Application for compensation Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, filed by attorney Jeffrey Nathan Pomerantz.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3038 Hearing held on 11/17/2021. (RE: related document(s)<a href="#">2907</a> Application for compensation Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021 for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP., (Appearances: T. Silva for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3039 Hearing held on 11/17/2021. (RE: related document(s)<a href="#">2908</a> Application for compensation Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021 for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, filed by Consultant Mercer (US) Inc. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3040 Hearing held on 11/17/2021. (RE: related document(s)<a href="#">2910</a> Application for compensation (Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, filed by Other Professional Hayward PLLC) (Appearances: Z. Annabel for Applicant; J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.), 3041 Hearing held on 11/17/2021. (RE: related document(s)<a href="#">2911</a> Application for compensation (Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, filed by Other Professional Deloitte Tax LLP) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Reorganized Debtor; M. Clemente for former UCC; L. Lambert ofr UST; K. Jain and S. Schwartz for NexPoint Advisors. Evidentiary hearing. Application approved and objections overruled. Counsel to upload order.)). Transcript to be made available to the public on 02/17/2022. (Rehling, Kathy)</p>
11/22/2021	<p><a href="#">3046</a> Order granting final fee application for compensation (related document # <a href="#">2872</a>) granting for Hunton Andrews Kurth LLP, fees awarded: \$1147059.42, expenses awarded: \$2747.84 Entered on 11/22/2021. (Okafor, Marcey)</p>
11/22/2021	<p><a href="#">3047</a> Order granting fifth and final application for compensation (related document # <a href="#">2906</a>) granting for Jeffrey Nathan Pomerantz, fees awarded: \$23978627.25, expenses awarded: \$334232.95 Entered on 11/22/2021. (Okafor, Marcey)</p>
11/22/2021	<p><a href="#">3048</a> Order granting application for compensation (related document # <a href="#">2907</a>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$2645729.72, expenses</p>

	awarded: \$5207.53 Entered on 11/22/2021. (Okafor, Marcey)
11/22/2021	<u>3049</u> Order granting application for compensation (related document # <u>2910</u> ) granting for Hayward PLLC, fees awarded: \$825629.50, expenses awarded: \$46482.92 Entered on 11/22/2021. (Okafor, Marcey)
11/23/2021	<u>3050</u> Notice of CPCM, LLC's Response to Clerk's Correspondence filed by Interested Party CPCM, LLC (RE: related document(s) <u>2998</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>2868</u> Application for administrative expenses for rank-and-file employees Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order), <u>2869</u> Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order)) Responses due by 11/23/2021. (Ecker, C.)). (Smith, Frances)
11/23/2021	<u>3051</u> Witness and Exhibit List for Hearing on November 30, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief), <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. (Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and). (Attachments: # <u>1</u> Exhibits 1-13) (Hayward, Melissa)
11/23/2021	<u>3052</u> Witness and Exhibit List filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2278</u> Response). (Attachments: # <u>1</u> Exhibit Exhibit 1. CONFIDENTIAL Highland246786 - 246818 # <u>2</u> Exhibit Exhibit 2. CONFIDENTIAL Highland209134 # <u>3</u> Exhibit Exhibit 3. SE Multifamily LLC Agreement # <u>4</u> Exhibit Exhibit 4. Bridge Loan Agreement # <u>5</u> Exhibit Exhibit 5. CONFIDENTIAL Highland136853 - 136883 # <u>6</u> Exhibit Exhibit 6. CONFIDENTIAL Highland136795 - 136822 # <u>7</u> Exhibit Exhibit 7. SE Multifamily Amended and Restated LLC Agreement # <u>8</u> Exhibit Exhibit 8. POC # <u>9</u> Exhibit Exhibit 9. Objection and Motion for Protective Order # <u>10</u> Exhibit Exhibit 10. Response to Omnibus Objection) (Drawhorn, Lauren)
11/23/2021	<u>3053</u> Notice of Appearance and Request for Notice Notice of Appearance of Additional Counsel - Jeffrey W. Hellberg, Jr. by Lauren Kessler Drawhorn Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
11/24/2021	Adversary case 3:21-ap-3000 closed Pursuant to LBR 9070-1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60-day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60-day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
11/24/2021	<u>3054</u> Amended Witness and Exhibit List for Hearing on November 30, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3051</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibits 14 and 15) (Hayward, Melissa)
11/24/2021	<u>3055</u> BNC certificate of mailing - PDF document. (RE: related document(s) <u>3047</u> Order granting fifth and final application for compensation (related document <u>2906</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$23978627.25, expenses awarded: \$334232.95 Entered on 11/22/2021.) No. of Notices: 1. Notice Date 11/24/2021. (Admin.)
11/29/2021	<u>3056</u> Order granting application for compensation (related document # <u>2903</u> ) granting for Teneo Capital, LLC, fees awarded: \$1358565.52, expenses awarded: \$6257.07 Entered on 11/29/2021. (Okafor, Marcey)
11/29/2021	<u>3057</u> Order granting application for compensation (related document <u>2904</u> ) granting for Sidney Austin, LLP, Attorneys for the Official Committee of Unsecured Creditors, fees

	awarded: \$13134805.20, expenses awarded: \$211841.25 Entered on 11/29/2021. (Okafor, Marcey) Modified text on 11/29/2021 (Okafor, Marcey).
11/29/2021	<u>3058</u> Order granting application for compensation (related document # <u>2902</u> ) granting for FTI Consulting, Inc., fees awarded: \$6176551.20, expenses awarded: \$39122.91 Entered on 11/29/2021. (Okafor, Marcey)
11/29/2021	<u>3059</u> Order granting application for compensation (related document # <u>2908</u> ) granting for Mercer (US) Inc., fees awarded: \$202317.65, expenses awarded: \$2449.37 Entered on 11/29/2021. (Okafor, Marcey)
11/29/2021	<u>3060</u> Amended Witness and Exhibit List <i>for Hearing on November 30, 2021</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>3052</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 11. – Transcript of August 13, 2021 Deposition of Mark Patrick [ECF No. 2928] # <u>2</u> Exhibit 12. – Transcript of September 17, 2021 Deposition of Ben Selman # <u>3</u> Exhibit 13. – NREP Designation of Expert Witness # <u>4</u> Exhibit 14. – Index to Documents Examined by Expert) (Drawhorn, Lauren)
11/29/2021	<u>3061</u> Certificate of service re: Documents Served on November 23, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3046</u> Order granting final fee application for compensation (related document <u>2872</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$1147059.42, expenses awarded: \$2747.84 Entered on 11/22/2021., <u>3047</u> Order granting fifth and final application for compensation (related document <u>2906</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$23978627.25, expenses awarded: \$334232.95 Entered on 11/22/2021., <u>3048</u> Order granting application for compensation (related document <u>2907</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$2645729.72, expenses awarded: \$5207.53 Entered on 11/22/2021., <u>3049</u> Order granting application for compensation (related document <u>2910</u> ) granting for Hayward PLLC, fees awarded: \$825629.50, expenses awarded: \$46482.92 Entered on 11/22/2021., <u>3051</u> Witness and Exhibit List <i>for Hearing on November 30, 2021</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ), <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and</i> ). (Attachments: # <u>1</u> Exhibits 1–13) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2021	<u>3062</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2893</u> , (Annable, Zachery)
11/30/2021	<u>3063</u> Certificate of service re: Various Documents Served on November 29, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3056</u> Order granting application for compensation (related document <u>2903</u> ) granting for Teneo Capital, LLC, fees awarded: \$1358565.52, expenses awarded: \$6257.07 Entered on 11/29/2021., <u>3057</u> Order granting application for compensation (related document <u>2904</u> ) granting for Sidney Austin, LLP, Attorneys for the Official Committee of Unsecured Creditors, fees awarded: \$13134805.20, expenses awarded: \$211841.25 Entered on 11/29/2021. (Okafor, Marcey) Modified text on 11/29/2021., <u>3058</u> Order granting application for compensation (related document <u>2902</u> ) granting for FTI Consulting, Inc., fees awarded: \$6176551.20, expenses awarded: \$39122.91 Entered on 11/29/2021., <u>3059</u> Order granting application for compensation (related document <u>2908</u> ) granting for Mercer (US) Inc., fees awarded: \$202317.65, expenses awarded: \$2449.37 Entered on 11/29/2021.). (Kass, Albert)

11/30/2021	<u>3065</u> Court admitted exhibits date of hearing November 30, 2021 (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S / RE-ORGANIZED DEBTOR'S EXHIBIT'S #1 THROUGH #13 AT DOC. #3051 & EXHIBIT'S #14 & #15 AT DOC. #3054 BY JOHN A. MORRIS; AND DEFENDANT'S/RESPONDENT'S EXHIBIT'S #1 THROUGH #14 AT AMENDED DOC. 3060 BY JEFFREY W. HELLBERG. JR., (Edmond, Michael) (Entered: 12/01/2021)
11/30/2021	<u>3071</u> Hearing held on 11/30/2021. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief, (Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris for Reorganized Debtor; J. Hellberg for Wick Phillips and NexPoint Real Estate. Evidentiary hearing. Motion granted for reasons stated on the record. Mr Morris to upload order.) (Edmond, Michael) (Entered: 12/02/2021)
12/01/2021	<u>3064</u> Order granting application for compensation (related document # <u>2911</u> ) granting for Deloitte Tax LLP, fees awarded: \$553412.60, expenses awarded: \$0.00 Entered on 12/1/2021. (Okafor, Marcey)
12/01/2021	<u>3066</u> Motion for leave to File Lawsuit Filed by Creditor The Dugaboy Investment Trust Objections due by 12/22/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Draper, Douglas)
12/01/2021	<u>3067</u> Certificate of service re: Second Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3062</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2893</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief. ( <i>Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/30/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2893</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/01/2021	<u>3068</u> Certificate of service re: (Supplemental) re Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3025</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3006</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/01/2021	<u>3069</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3059</u> Order granting application for compensation (related document <u>2908</u> ) granting for Mercer (US) Inc., fees awarded: \$202317.65, expenses awarded: \$2449.37 Entered on 11/29/2021.) No. of Notices: 1. Notice Date 12/01/2021. (Admin.)
12/02/2021	<u>3070</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2828</u> Order on motion to extend/shorten time)). (Annable, Zachery)
12/02/2021	<u>3074</u> ***INCORRECT ENTRY*** Request for transcript regarding a hearing held on 11/30/2021. The requested turn-around time is daily (Jeng, Hawaii) Modified TEXT on 12/3/2021 (Jeng, Hawaii). (Entered: 12/03/2021)

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12/03/2021	<u>3072</u> PDF with attached Audio File. Court Date & Time [11/17/2021 09:01:56 AM]. File Size [ 27292 KB ]. Run Time [ 01:56:50 ]. (admin).
12/03/2021	<u>3073</u> PDF with attached Audio File. Court Date & Time [11/30/2021 08:56:02 AM]. File Size [ 43946 KB ]. Run Time [ 03:08:47 ]. (admin).
12/03/2021	<u>3075</u> Request for transcript regarding a hearing held on 11/30/2021. The requested turn-around time is daily (Jeng, Hawaii) .
12/03/2021	<u>3076</u> Notice of appeal of <i>Order Granting Twenty-First and Final Fee Application of FTI Consulting, Inc.</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3058</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # <u>1</u> Exhibit Exh A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29168859, amount \$ 298.00 (re: Doc# <u>3076</u> ). (U.S. Treasury)
12/03/2021	<u>3077</u> Notice of appeal <i>Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s) <u>3047</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # <u>1</u> Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29168896, amount \$ 298.00 (re: Doc# <u>3077</u> ). (U.S. Treasury)
12/03/2021	<u>3078</u> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3048</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # <u>1</u> Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29168917, amount \$ 298.00 (re: Doc# <u>3078</u> ). (U.S. Treasury)
12/03/2021	<u>3079</u> Notice of appeal of <i>Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3056</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # <u>1</u> Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29168940, amount \$ 298.00 (re: Doc# <u>3079</u> ). (U.S. Treasury)
12/03/2021	<u>3080</u> Notice of appeal of <i>Order Granting Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3057</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # <u>1</u> Exhibit A to Notice of Appeal)(Jain, Kristin)
12/03/2021	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29168959, amount \$ 298.00 (re: Doc# <u>3080</u> ). (U.S. Treasury)
12/03/2021	<u>3081</u> Certificate of service re: Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on November 30, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3054</u> Amended Witness and Exhibit List for Hearing on November 30, 2021 filed by Debtor

	Highland Capital Management, L.P. (RE: related document(s) <u>3051</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibits 14 and 15) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2021	<u>3082</u> Certificate of service re: Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals ( <i>Supplemental</i> ) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2915</u> Omnibus Notice of hearing ( <i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2872</u> Application for compensation ( <i>FINAL</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee: \$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation ( <i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation ( <i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2021	<u>3083</u> Certificate of service re: Order Granting Deloitte Tax LLP's Final Fee Application for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through August 11, 2021 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3064</u> Order granting application for compensation (related document <u>2911</u> ) granting for Deloitte Tax LLP, fees awarded: \$553412.60, expenses awarded: \$0.00 Entered on 12/1/2021.). (Kass, Albert)
12/05/2021	

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	<p><u>3084</u> Transcript regarding Hearing Held 11/30/2021 (77 pages) RE: Motion to Disqualify. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/5/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3071 Hearing held on 11/30/2021. (RE: related document(s)<u>2893</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief, (Highland's Supplemental Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris for Reorganized Debtor; J. Hellberg for Wick Phillips and NexPoint Real Estate. Evidentiary hearing. Motion granted for reasons stated on the record. Mr Morris to upload order.)). Transcript to be made available to the public on 03/5/2022. (Rehling, Kathy)</p>
12/06/2021	<p><u>3085</u> Order further extending period within which the reorganized debtor may remove actions pursuant to 28 U.S.C. section 1452 and rule 9027 of the federal rules of bankruptcy procedure <u>3006</u> Motion to extend time. Entered on 12/6/2021. (Bradden, T.)</p>
12/06/2021	<p><u>3086</u> Objection to claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)</p>
12/07/2021	<p><u>3087</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3086</u> Objection to claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 1/27/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3086</u>, (Annable, Zachery)</p>
12/08/2021	<p><u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>
12/08/2021	<p><u>3089</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>)). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement) (Annable, Zachery)</p>
12/08/2021	<p><u>3090</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>3085</u> Order further extending period within which the reorganized debtor may remove actions pursuant to 28 U.S.C. section 1452 and rule 9027 of the federal rules of bankruptcy procedure <u>3006</u> Motion to extend time. Entered on 12/6/2021. (Bradden, T.)) No. of Notices: 1. Notice Date 12/08/2021. (Admin.)</p>
12/09/2021	<p><u>3091</u> Stipulation by Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust and Scott Ellington, Isaac Leventon, Frank Waterhouse, and Jean-Paul Sevilla ***Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253. filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)</p>

12/09/2021	<u>3092</u> Certificate of service re: 1) Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Reorganized Debtor's Objection to Proof of Claim No. 65 and No. 66 Filed by Paul N. Adkins Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3085</u> Order further extending period within which the reorganized debtor may remove actions pursuant to 28 U.S.C. section 1452 and rule 9027 of the federal rules of bankruptcy procedure <u>3006</u> Motion to extend time. Entered on 12/6/2021. (Bradden, T.), <u>3086</u> Objection to claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2021	<u>3094</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3077</u> Notice of appeal <i>Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s) <u>3047</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
12/10/2021	<u>3095</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3077</u> Notice of appeal <i>Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s) <u>3047</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3096</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-03086-K. (RE: related document(s) <u>3077</u> Notice of appeal <i>Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s) <u>3047</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3097</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3078</u> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3048</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
12/10/2021	<u>3098</u> INCORRECT ENTRY. Incomplete Form. Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3078</u> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3048</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua) Modified on 12/10/2021 (Whitaker, Sheniqua).
12/10/2021	<u>3099</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3078</u> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3048</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3100</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-03088-X. (RE: related document(s) <u>3078</u> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3048</u> Order on application for compensation). Appellant Designation due by

	12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3101</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3079</u> Notice of appeal of <i>Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3056</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
12/10/2021	<u>3102</u> Agreed first amended scheduling order on Debtor's third omnibus objection to certain no-liability claims (RE: related document(s) <u>2059</u> Third Omnibus objection to certain no-liability claims <u>2976</u> Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> , Entered on 12/10/2021 (Okafor, Marcey)
12/10/2021	<u>3103</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3079</u> Notice of appeal of <i>Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3056</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3104</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-03094-E. (RE: related document(s) <u>3079</u> Notice of appeal of <i>Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3056</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3106</u> Order granting in part, denying in part Highland's supplemental motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC (related document # <u>2196</u> and <u>2893</u> ) Entered on 12/10/2021. (Okafor, Marcey)
12/10/2021	<u>3107</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3080</u> Notice of appeal of <i>Order Granting Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3057</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
12/10/2021	<u>3108</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3080</u> Notice of appeal of <i>Order Granting Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3057</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3109</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-03096-L. (RE: related document(s) <u>3080</u> Notice of appeal of <i>Order Granting Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3057</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) (Whitaker, Sheniqua)
12/10/2021	<u>3110</u> Certificate of service re: Notice of Hearing on Reorganized Debtor's Objection to Proof of Claim No. 65 and No. 66 Filed by Paul N. Adkins Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3087</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3086</u> Objection to

	<p>claim(s) of Creditor(s) Paul N. Adkins.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 1/27/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3086</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/10/2021	<p><u>3111</u> Certificate of service re: 1) Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith; and 2) Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>3089</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>)). (Attachments: # 1 Exhibit 1—Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/10/2021	<p><u>3112</u> Certificate of service re: (Supplemental) re Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2915</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2872</u> Application for compensation (<i>FINAL</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 10/16/2019 to 8/11/2021, Fee: \$1,147,059.42, Expenses: \$2,747.84. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 10/25/2021., <u>2902</u> Application for compensation <i>The Twenty-First and Final Fee Application</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 8/11/2021, Fee: \$6,176,551.20, Expenses: \$39,122.91. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/29/2021., <u>2903</u> Application for compensation <i>Second Consolidated Monthly and Final Fee Application</i> for Teneo Capital, LLC, Other Professional, Period: 4/15/2021 to 8/11/2021, Fee: \$1,358,565.52, Expenses: \$6,257.07. Filed by Other Professional Teneo Capital, LLC Objections due by 10/29/2021., <u>2904</u> Application for compensation <i>Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 8/11/2021, Fee: \$13,134,805.2, Expenses: \$211,841.25. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/29/2021., <u>2906</u> Application for compensation <i>Fifth and Final Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from October 19, 2019 through August 10, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 8/10/2021, Fee: \$23978627.25, Expenses: \$334,232.95. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/29/2021., <u>2907</u> Application for compensation <i>Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period October 16, 2019 through August 11, 2021</i> for Wilmer Cutler Pickering Hale and Dorr LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$2,645,729.72, Expenses: \$5,207.53. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP Objections due by 10/29/2021., <u>2908</u> Application for compensation <i>Third and Final Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from November 15, 2019 through August 10, 2021</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 8/10/2021, Fee:</p>

	<p>\$202,317.65, Expenses: \$2,449.37. Filed by Consultant Mercer (US) Inc. Objections due by 10/29/2021., <u>2910</u> Application for compensation (<i>Hayward PLLC's Final Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through August 11, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/10/2019 to 8/11/2021, Fee: \$825,629.50, Expenses: \$46,482.92. Filed by Other Professional Hayward PLLC, <u>2911</u> Application for compensation (<i>Final Fee Application of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through August 11, 2021</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 8/11/2021, Fee: \$553,412.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP). Hearing to be held on 11/9/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2903</u> and for <u>2904</u> and for <u>2907</u> and for <u>2910</u> and for <u>2872</u> and for <u>2911</u> and for <u>2908</u> and for <u>2906</u> and for <u>2902</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/12/2021	<p><u>3113</u> BNC certificate of mailing. (RE: related document(s)<u>3099</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>3078</u> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3048</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal))) No. of Notices: 1. Notice Date 12/12/2021. (Admin.)</p>
12/13/2021	<p><u>3115</u> INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s)<u>3076</u> Notice of appeal of <i>Order Granting Twenty-First and Final Fee Application of FTI Consulting, Inc.</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3058</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua) Modified on 12/13/2021 (Whitaker, Sheniqua).</p>
12/13/2021	<p><u>3116</u> Certificate of mailing regarding appeal (RE: related document(s)<u>3076</u> Notice of appeal of <i>Order Granting Twenty-First and Final Fee Application of FTI Consulting, Inc.</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3058</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)</p>
12/13/2021	<p><u>3117</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>3076</u> Notice of appeal of <i>Order Granting Twenty-First and Final Fee Application of FTI Consulting, Inc.</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3058</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Whitaker, Sheniqua)</p>
12/13/2021	<p><u>3118</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-03104-G. (RE: related document(s)<u>3076</u> Notice of appeal of <i>Order Granting Twenty-First and Final Fee Application of FTI Consulting, Inc.</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3058</u> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of Appeal)) (Whitaker, Sheniqua)</p>
12/14/2021	<p><u>3119</u> Certificate of service re: Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3091</u> Stipulation by Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust and Scott Ellington, Isaac Leventon, Frank Waterhouse, and Jean-Paul Sevilla ***Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253. filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Proposed Order) filed by Interested Party Litigation</p>

	Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust). (Kass, Albert)
12/15/2021	<u>3120</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. ( <i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3088</u> , (Annable, Zachery)
12/15/2021	<u>3121</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)). Hearing to be held on 2/28/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3001</u> , (Montgomery, Paige)
12/16/2021	<u>3122</u> Certificate of service re: re 1) Agreed First Amended Scheduling Order on Debtor's Third Omnibus Objection to Certain No-Liability Claims; and 2) Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3102</u> Agreed first amended scheduling order on Debtor's third omnibus objection to certain no-liability claims (RE: related document(s) <u>2059</u> Third Omnibus objection to certain no-liability claims <u>2976</u> Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> , Entered on 12/10/2021, <u>3106</u> Order granting in part, denying in part Highland's supplemental motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC (related document <u>2196</u> and <u>2893</u> ) Entered on 12/10/2021.). (Kass, Albert)
12/17/2021	<u>3123</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3077</u> Notice of appeal, <u>3095</u> Notice regarding the record for a bankruptcy appeal, <u>3096</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	<u>3124</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3078</u> Notice of appeal, <u>3099</u> Notice regarding the record for a bankruptcy appeal, <u>3100</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	<u>3125</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3079</u> Notice of appeal, <u>3103</u> Notice regarding the record for a bankruptcy appeal, <u>3104</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	<u>3126</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3080</u> Notice of appeal, <u>3108</u> Notice regarding the record for a bankruptcy appeal, <u>3109</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/17/2021	<u>3127</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3076</u> Notice of appeal, <u>3117</u> Notice regarding the record for a bankruptcy

	appeal, <u>3118</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022. (Jain, Kristin)
12/20/2021	<u>3128</u> Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas)
12/20/2021	<u>3129</u> Request for Removal from Mailing List filed by Creditor Carpenter Lipps & Leland LLP . (Tello, Chris)
12/20/2021	<u>3130</u> Certificate of service re: Notice of Hearing on Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3120</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. ( <i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3088</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/21/2021	<u>3131</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School Filed by Debtor Highland Capital Management, L.P and <u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> and <u>2059</u> , (Annable, Zachery). MODIFIED linkage on 12/21/2021 (Okafor, Marcey).

12/21/2021	<p><u>3133</u> Notice of hearing filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>3128</u> Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust). Hearing to be held on 2/1/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3128</u>, (Attachments: # <u>1</u> Hearing Instructions) (Draper, Douglas)</p>
12/22/2021	<p><u>3134</u> Response unopposed to (related document(s): <u>3066</u> Motion for leave to <i>File Lawsuit</i> filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/22/2021	<p><u>3135</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3088</u>, (Annable, Zachery)</p>
12/27/2021	<p><u>3136</u> Certificate of service re: Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3131</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School Filed by Debtor Highland Capital Management, L.P and <u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Appendix A # <u>2</u> Appendix B # <u>3</u> Exhibit A # <u>4</u> Exhibit B # <u>5</u> Exhibit C) (Annable, Zachery). Modified on 11/3/2021.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> and <u>2059</u>, (Annable, Zachery). MODIFIED linkage on 12/21/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

12/28/2021	<p><u>3137</u> Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)<u>3011</u> Motion to stay pending appeal <i>Amended</i> (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Creditor CLO Holdco, Ltd., Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (Attachments: # 1 Exhibit A–Motion to Withdraw Reference)) Responses due by 1/11/2022. (Ecker, C.)</p>
12/28/2021	<p><u>3138</u> Clerk's correspondence requesting amended designation from attorney for appellant. (RE: related document(s)<u>3124</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3078</u> Notice of appeal, <u>3099</u> Notice regarding the record for a bankruptcy appeal, <u>3100</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., <u>3125</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3079</u> Notice of appeal, <u>3103</u> Notice regarding the record for a bankruptcy appeal, <u>3104</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., <u>3126</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3080</u> Notice of appeal, <u>3108</u> Notice regarding the record for a bankruptcy appeal, <u>3109</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., <u>3127</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3076</u> Notice of appeal, <u>3117</u> Notice regarding the record for a bankruptcy appeal, <u>3118</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022.) Responses due by 1/27/2022. (Blanco, J.)</p>
12/28/2021	<p><u>3139</u> Certificate of service re: 1) Reorganized Debtors (I) Response to Motion for Leave to File Lawsuit and (II) Reservation of Rights; and 2) Amended Notice of Hearing on Reorganized Debtors Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3134</u> Response unopposed to (related document(s): <u>3066</u> Motion for leave to <i>File Lawsuit</i> filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3135</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/1/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3088</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/29/2021	<p><u>3140</u> Notice <i>Regarding Response to Clerk's Correspondence of December 28, 2021</i> filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3138</u> Clerk's correspondence requesting amended designation from attorney for appellant. (RE: related document(s)<u>3124</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3078</u> Notice of appeal, <u>3099</u> Notice regarding the record for a bankruptcy appeal, <u>3100</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., <u>3125</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3079</u> Notice of appeal, <u>3103</u> Notice regarding the record for a bankruptcy appeal, <u>3104</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., <u>3126</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3080</u> Notice of appeal, <u>3108</u> Notice regarding the record for a bankruptcy appeal, <u>3109</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022., <u>3127</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<u>3076</u> Notice of appeal, <u>3117</u> Notice regarding the record for a bankruptcy appeal, <u>3118</u> Notice of docketing notice of appeal/record). Appellee designation due by 01/3/2022.) Responses due by 1/27/2022. (Blanco, J.). (Jain, Kristin)</p>

12/30/2021	<u>3141</u> Order granting <u>2889</u> motion to strike document. (re: document <u>2852</u> Application for compensation) Entered on 12/30/2021. (Okafor, Marcey)
12/30/2021	<u>3142</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 2/28/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2940</u> , (Annable, Zachery)
12/31/2021	<u>3143</u> Certificate of service re: Notice of Hearing on Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3142</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A)). Hearing to be held on 2/28/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2940</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/01/2022	<u>3144</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3141</u> Order granting <u>2889</u> motion to strike document. (re: document <u>2852</u> Application for compensation) Entered on 12/30/2021.) No. of Notices: 1. Notice Date 01/01/2022. (Admin.)
01/03/2022	<u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/03/2022	<u>3146</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hunter Covitz (Claim No. 186) To NexPoint Advisors, L.P.. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
01/03/2022	<u>3147</u> Response opposed to (related document(s): <u>3002</u> Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian) Filed by Interested Party NexPoint Advisors, L.P. (related document(s) <u>3002</u> Objection to claim(s) of Creditor(s) Hunter Covitz.. Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust). (Vasek, Julian)
01/03/2022	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)( <u>19-34054-sgj11</u> ) [claims,trclmagt] ( 26.00). Receipt number A29228864, amount \$ 26.00 (re: Doc# <u>3146</u> ). (U.S. Treasury)
01/03/2022	<u>3148</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3145</u> , (Annable, Zachery)
01/03/2022	<u>3149</u> Appellee designation of contents for inclusion in record of appeal <i>Supplemental Designation of Record on Appeal</i> filed by Creditor Sidley Austin LLP (RE: related document(s) <u>3076</u> Notice of appeal, <u>3077</u> Notice of appeal, <u>3078</u> Notice of appeal, <u>3079</u> Notice of appeal, <u>3080</u> Notice of appeal, <u>3095</u> Notice regarding the record for a bankruptcy appeal, <u>3096</u> Notice of docketing notice of appeal/record, <u>3099</u> Notice regarding the record for a bankruptcy appeal, <u>3100</u> Notice of docketing notice of appeal/record, <u>3103</u> Notice regarding the record for a bankruptcy appeal, <u>3104</u> Notice of docketing notice of

	appeal/record, <u>3108</u> Notice regarding the record for a bankruptcy appeal, <u>3109</u> Notice of docketing notice of appeal/record, <u>3117</u> Notice regarding the record for a bankruptcy appeal, <u>3118</u> Notice of docketing notice of appeal/record). (Hoffman, Juliana)
01/03/2022	<u>3150</u> Appellee designation of contents for inclusion in record of appeal <i>Supplemental Designation of Record on Appeal</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>3076</u> Notice of appeal). (Hoffman, Juliana)
01/03/2022	<u>3151</u> Appellee designation of contents for inclusion in record of appeal <i>Supplemental Designation of Record</i> filed by Other Professional Teneo Capital, LLC (RE: related document(s) <u>3078</u> Notice of appeal). (Hoffman, Juliana)
01/03/2022	<u>3152</u> Withdrawal of claim(s): <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 135, 137 and 139</i> Filed by Interested Party Mark Okada. (Glueckstein, Brian)
01/03/2022	<u>3153</u> Appellee designation of contents for inclusion in record of appeal filed by Attorney Pachulski Stang Ziehl & Jones LLP (RE: related document(s) <u>3077</u> Notice of appeal). (Annable, Zachery)
01/03/2022	<u>3154</u> Appellee designation of contents for inclusion in record of appeal filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s) <u>3078</u> Notice of appeal). (Annable, Zachery)
01/04/2022	<u>3155</u> Notice to take deposition of Jim Seery filed by Interested Party CPCM, LLC. (Smith, Frances)
01/04/2022	<u>3156</u> Notice to take deposition of CPCM, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2022	<u>3157</u> Notice to take deposition of Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2022	<u>3158</u> Notice to take deposition of Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2022	<u>3159</u> Motion to appear pro hac vice for Jeffrey M. Dine. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Good Standing) (Hayward, Melissa)
01/05/2022	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29235722, amount \$ 100.00 (re: Doc# <u>3159</u> ). (U.S. Treasury)
01/06/2022	<u>3160</u> Stipulation by Highland Capital Management, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2044</u> Assignment/Transfer of claim (Claims Agent), <u>2045</u> Assignment/Transfer of claim (Claims Agent), <u>2046</u> Assignment/Transfer of claim (Claims Agent), <u>2047</u> Assignment/Transfer of claim (Claims Agent), <u>2059</u> Objection to claim, <u>2266</u> Assignment/Transfer of claim (Claims Agent), <u>2974</u> Objection to claim, <u>2976</u> Objection to claim). (Annable, Zachery)
01/06/2022	<u>3161</u> Certificate of service re: Documents Served on January 3, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3148</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3145</u> , filed by

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	<p>Debtor Highland Capital Management, L.P., <a href="#">3149</a> Appellee designation of contents for inclusion in record of appeal <i>Supplemental Designation of Record on Appeal</i> filed by Creditor Sidley Austin LLP (RE: related document(s)<a href="#">3076</a> Notice of appeal, <a href="#">3077</a> Notice of appeal, <a href="#">3078</a> Notice of appeal, <a href="#">3079</a> Notice of appeal, <a href="#">3080</a> Notice of appeal, <a href="#">3095</a> Notice regarding the record for a bankruptcy appeal, <a href="#">3096</a> Notice of docketing notice of appeal/record, <a href="#">3099</a> Notice regarding the record for a bankruptcy appeal, <a href="#">3100</a> Notice of docketing notice of appeal/record, <a href="#">3103</a> Notice regarding the record for a bankruptcy appeal, <a href="#">3104</a> Notice of docketing notice of appeal/record, <a href="#">3108</a> Notice regarding the record for a bankruptcy appeal, <a href="#">3109</a> Notice of docketing notice of appeal/record, <a href="#">3117</a> Notice regarding the record for a bankruptcy appeal, <a href="#">3118</a> Notice of docketing notice of appeal/record). filed by Creditor Sidley Austin LLP, <a href="#">3150</a> Appellee designation of contents for inclusion in record of appeal <i>Supplemental Designation of Record on Appeal</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<a href="#">3076</a> Notice of appeal). filed by Financial Advisor FTI Consulting, Inc., <a href="#">3151</a> Appellee designation of contents for inclusion in record of appeal <i>Supplemental Designation of Record</i> filed by Other Professional Teneo Capital, LLC (RE: related document(s)<a href="#">3078</a> Notice of appeal). filed by Other Professional Teneo Capital, LLC, <a href="#">3153</a> Appellee designation of contents for inclusion in record of appeal filed by Attorney Pachulski Stang Ziehl &amp; Jones LLP (RE: related document(s)<a href="#">3077</a> Notice of appeal). filed by Attorney Pachulski Stang Ziehl &amp; Jones LLP, <a href="#">3154</a> Appellee designation of contents for inclusion in record of appeal filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s)<a href="#">3078</a> Notice of appeal). filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP). (Kass, Albert)</p>
01/06/2022	<p><a href="#">3162</a> Certificate of service re: Highland's Notice of Rule 30(b)(6) Deposition to CPCM, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3156</a> Notice to take deposition of CPCM, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/07/2022	<p><a href="#">3163</a> Order authorizing withdrawal of proofs of claim nos. 135, 137 and 139 (RE: related document(s)<a href="#">3152</a> Withdrawal of claim filed by Interested Party Mark Okada). Entered on 1/7/2022 (Bradden, T.)</p>
01/07/2022	<p><a href="#">3164</a> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim nos. 182, 184, 185, 187, 192, 214, 215, 242, 245 and 253 (RE: related document(s)<a href="#">3091</a> Stipulation filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust). Entered on 1/7/2022 (Bradden, T.)</p>
01/07/2022	<p><a href="#">3165</a> Order granting motion to appear pro hac vice adding Jeffrey M. Dine for Highland Capital Management, L.P. (related document # <a href="#">3159</a>) Entered on 1/7/2022. (Bradden, T.)</p>
01/07/2022	<p><a href="#">3166</a> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to Nexpoint Advisors, L.P. (RE: related document(s)<a href="#">3160</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 1/7/2022 (Dugan, Sue)</p>
01/07/2022	<p><a href="#">3167</a> Reply to (related document(s): <a href="#">3147</a> Response to objection to claim filed by Interested Party NexPoint Advisors, L.P.) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Montgomery, Paige)</p>
01/07/2022	<p><a href="#">3168</a> Certificate of service re: Highland's Amended Notice of Deposition to Frank Waterhouse Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3158</a> Notice to take deposition of Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/08/2022	<p><a href="#">3169</a> Subpoena on Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/09/2022	

	<u>3170</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3163</u> Order authorizing withdrawal of proofs of claim nos. 135, 137 and 139 (RE: related document(s) <u>3152</u> Withdrawal of claim filed by Interested Party Mark Okada). Entered on 1/7/2022 (Bradden, T.)) No. of Notices: 2. Notice Date 01/09/2022. (Admin.)
01/09/2022	<u>3171</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3164</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim nos. 182, 184, 185, 187, 192, 214, 215, 242, 245 and 253 (RE: related document(s) <u>3091</u> Stipulation filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust). Entered on 1/7/2022 (Bradden, T.)) No. of Notices: 2. Notice Date 01/09/2022. (Admin.)
01/09/2022	<u>3172</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3165</u> Order granting motion to appear pro hac vice adding Jeffrey M. Dine for Highland Capital Management, L.P. (related document <u>3159</u> ) Entered on 1/7/2022. (Bradden, T.)) No. of Notices: 2. Notice Date 01/09/2022. (Admin.)
01/10/2022	<u>3173</u> Motion to extend time to Engage Substitute Counsel (RE: related document(s) <u>3106</u> Order on motion to compel) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
01/11/2022	<u>3174</u> Order granting <u>3173</u> Agreed Motion to Continue Deadline Engage Substitute Counsel Entered on 1/11/2022. (Okafor, Marcey)
01/11/2022	<u>3175</u> Certificate of service re: Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to NexPoint Advisors, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3160</u> Stipulation by Highland Capital Management, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2044</u> Assignment/Transfer of claim (Claims Agent), <u>2045</u> Assignment/Transfer of claim (Claims Agent), <u>2046</u> Assignment/Transfer of claim (Claims Agent), <u>2047</u> Assignment/Transfer of claim (Claims Agent), <u>2059</u> Objection to claim, <u>2266</u> Assignment/Transfer of claim (Claims Agent), <u>2974</u> Objection to claim, <u>2976</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/11/2022	<u>3176</u> Certificate of service re: Reorganized Debtor's Notice of Service of a Subpoena to Frank Waterhouse in Connection with Amended Motion to Disallow Claim Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3169</u> Subpoena on Frank Waterhouse filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/11/2022	<u>3177</u> Response opposed to (related document(s): <u>3001</u> Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust) and <i>Motion to Ratify Second Amendment to Proof of Claim</i> filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)
01/11/2022	<u>3178</u> Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. . (RE: related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean–Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.) (Entered: 01/12/2022)
01/11/2022	<u>3266</u> DISTRICT COURT ORDER CONSOLIDATING CASES: Member case(s) 3:21–CV–3088, 3:21–CV–3094, 3:21–CV–3096, 3:21–CV–3104 consolidated with lead case 3:21–CV–3086–K. Wilmer Cutler Pickering Hale and Dorr LLP, Teneo Capital LLC, Sidley Austin LLP and FTI Consulting Inc, added to case pursuant to consolidation. (Ordered by Judge Ed Kinkeade on 1/11/2022) (RE: related document(s) <u>3076</u> Notice of appeal filed by Interested Party NexPoint Advisors, L.P., <u>3077</u> Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P., <u>3078</u> Notice of appeal filed by

	Interested Party NexPoint Advisors, L.P., <u>3079</u> Notice of appeal filed by Interested Party NexPoint Advisors, L.P., <u>3080</u> Notice of appeal filed by Interested Party NexPoint Advisors, L.P.). Entered on 1/11/2022 (Whitaker, Sheniqua) (Entered: 02/25/2022)
01/11/2022	<u>3374</u> DISTRICT COURT ORDER CONSOLIDATING CASES: Member case(s) 3:21-CV-3088, 3:21-CV-3094, 3:21-CV-3096, 3:21-CV-3104 consolidated with lead case 3:21-CV-3086-K. Wilmer Cutler Pickering Hale and Dorr LLP, Teneo Capital LLC, Sidley Austin LLP and FTI Consulting Inc, added to case pursuant to consolidation. (Ordered by Judge Ed Kinkeade on 1/11/2022) (RE: related document(s) <u>3096</u> Notice of docketing notice of appeal/record, <u>3100</u> Notice of docketing notice of appeal/record, <u>3104</u> Notice of docketing notice of appeal/record, <u>3109</u> Notice of docketing notice of appeal/record, <u>3118</u> Notice of docketing notice of appeal/record). Entered on 1/11/2022 (Whitaker, Sheniqua) (Entered: 06/23/2022)
01/12/2022	<u>3179</u> Certificate of service re: 1) Order Authorizing Withdrawal of Proofs of Claim Nos. 135, 137 and 139; 2) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim Nos. 182, 184, 185, 187, 192, 214, 215, 242, 245, and 253; and 3) Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to NexPoint Advisors, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3163</u> Order authorizing withdrawal of proofs of claim nos. 135, 137 and 139 (RE: related document(s) <u>3152</u> Withdrawal of claim filed by Interested Party Mark Okada). Entered on 1/7/2022 (Bradden, T.), <u>3164</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim nos. 182, 184, 185, 187, 192, 214, 215, 242, 245 and 253 (RE: related document(s) <u>3091</u> Stipulation filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust). Entered on 1/7/2022 (Bradden, T.), <u>3166</u> Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Claims Transferred to Nexpoint Advisors, L.P. (RE: related document(s) <u>3160</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 1/7/2022). (Kass, Albert)
01/13/2022	<u>3180</u> Order sustaining Litigation Trustee's objection to claim of Hunter Covitz (RE: related document(s) <u>3002</u> Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust). Entered on 1/13/2022 (Okafor, Marcey)
01/14/2022	<u>3181</u> Notice of Appearance and Request for Notice by Charles W. Gameros Jr. filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
01/14/2022	<u>3182</u> Witness and Exhibit List (unsigned) filed by Creditor Paul N. Adkins (RE: related document(s) <u>3086</u> Objection to claim). (Whitaker, Sheniqua)
01/14/2022	<u>3183</u> Certificate of service re: (Supplemental) re Agreed First Amended Scheduling Order on Debtor's Third Omnibus Objection to Certain No-Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3102</u> Agreed first amended scheduling order on Debtor's third omnibus objection to certain no-liability claims (RE: related document(s) <u>2059</u> Third Omnibus objection to certain no-liability claims <u>2976</u> Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> , Entered on 12/10/2021). (Kass, Albert)
01/17/2022	<u>3184</u> Response opposed to (related document(s): <u>3128</u> Motion for 2004 examination of Thomas Surgent. filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/18/2022	<u>3185</u> Adversary case 22-03003. Complaint by Scott Byron Ellington against Patrick Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Appendix to Notice of Removal # <u>2</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 01 (Determination of removed claim or cause). (Brookner, Jason)

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01/18/2022	<u>3186</u> Certificate of service re: Order Sustaining the Litigation Trustee's Objection to Proof of Claim Filed by Hunter Covitz (Claim No. 186) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3180</u> Order sustaining Litigation Trustee's objection to claim of Hunter Covitz (RE: related document(s) <u>3002</u> Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust). Entered on 1/13/2022). (Kass, Albert)
01/18/2022	<u>3187</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. <i>Consolidated Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented</i> filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3123</u> Appellant designation, <u>3124</u> Appellant designation, <u>3125</u> Appellant designation, <u>3126</u> Appellant designation, <u>3127</u> Appellant designation). (Jain, Kristin)
01/19/2022	<u>3188</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3066</u> Motion for leave to <i>File Lawsuit</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 12/22/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)) Responses due by 1/26/2022. (Ecker, C.)
01/19/2022	<u>3189</u> Certificate of service re: Reorganized Debtors Objection to Motion to Produce Documents and to Sit for a Rule 2004 Examination Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3184</u> Response opposed to (related document(s): <u>3128</u> Motion for 2004 examination of Thomas Surgent. filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2022	<u>3190</u> Stipulation by James Dondero and Marc S. Kirschner, Litigation Trustee. filed by Interested Party James Dondero (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
01/24/2022	<u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) filed by Debtor Highland Capital Management, L.P., <u>3169</u> Subpoena filed by Debtor Highland Capital Management, L.P.) Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
01/24/2022	<u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Smith, Frances)
01/25/2022	<u>3193</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3086</u> Objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11) (Annable, Zachery)
01/25/2022	<u>3194</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3145</u> Motion to extend time to object to claims). (Annable, Zachery)
01/25/2022	<u>3195</u> Amended appellee designation of contents for inclusion in record of appeal ( <i>Appellees' Consolidated Supplemental Designation of Record on Appeal</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3149</u> Appellee designation, <u>3150</u> Appellee designation, <u>3151</u> Appellee designation, <u>3153</u> Appellee designation, <u>3154</u> Appellee designation). (Annable, Zachery)
01/26/2022	

	<u>3196</u> Notice of appeal . Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3180</u> Order regarding objection). Appellant Designation due by 02/9/2022. (Attachments: # <u>1</u> Exhibit A)(Vasek, Julian)
01/26/2022	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29283544, amount \$ 298.00 (re: Doc# <u>3196</u> ). (U.S. Treasury)
01/26/2022	<u>3197</u> Certificate of service re: 1) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 27, 2022; and 2) Appellees' Consolidated Supplemental Designation of Record on Appeal Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3193</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3086</u> Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) filed by Debtor Highland Capital Management, L.P., <u>3195</u> Amended appellee designation of contents for inclusion in record of appeal ( <i>Appellees' Consolidated Supplemental Designation of Record on Appeal</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3149</u> Appellee designation, <u>3150</u> Appellee designation, <u>3151</u> Appellee designation, <u>3153</u> Appellee designation, <u>3154</u> Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2022	Adversary case 3:21-ap-3051 closed (Ecker, C.)
01/27/2022	<u>3198</u> Order granting <u>3145</u> Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022. (Okafor, Marcey)
01/27/2022	<u>3199</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3085</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/27/2022	<u>3200</u> Amended Chapter 11 Post-Confirmation Report for the Quarter Ending: 09/30/2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2949</u> Chapter 11 Post-Confirmation Report, <u>3004</u> Chapter 11 Post-Confirmation Report). (Attachments: # <u>1</u> Global Notes to Amended Post-Confirmation Report) (Annable, Zachery)
01/27/2022	<u>3201</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
01/27/2022	<u>3202</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/2021 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
01/27/2022	<u>3203</u> Witness and Exhibit List for <i>Hearing on Motion to Produce Documents &amp; to Sit for a Rule 2004 Examination</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3128</u> Motion for 2004 examination of Thomas Surgent.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 3A # <u>3</u> Exhibit 3B # <u>4</u> Exhibit 3C # <u>5</u> Exhibit 4 # <u>6</u> Exhibit 5 # <u>7</u> Exhibit 6 # <u>8</u> Exhibit 7 # <u>9</u> Exhibit 8 # <u>10</u> Exhibit 9 # <u>11</u> Exhibit 10 # <u>12</u> Exhibit 11 # <u>13</u> Exhibit 12 # <u>14</u> Exhibit 13 # <u>15</u> Exhibit 14 # <u>16</u> Exhibit 15 # <u>17</u> Exhibit 16 # <u>18</u> Exhibit 17 # <u>19</u> Exhibit 18 # <u>20</u> Exhibit 19 # <u>21</u> Exhibit 20 # <u>22</u> Exhibit 2 A-E) (Draper, Douglas)
01/27/2022	<u>3204</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3199</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3085</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/1/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3199</u> , (Annable, Zachery)

01/27/2022	<p><u>3205</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2976</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) <i>CPCM's Response to Debtor's Third Omnibus Objection</i> filed by Interested Party CPCM, LLC. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Soderlund, Eric) Filed by Interested Party CPCM, LLC (related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2976</u> AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Appendix A # <u>2</u> Appendix B # <u>3</u> Exhibit A # <u>4</u> Exhibit B # <u>5</u> Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Soderlund, Eric)</p>
01/27/2022	<p><u>3206</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3193</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 12 # <u>2</u> Exhibit 13 # <u>3</u> Exhibit 14 # <u>4</u> Exhibit 15 # <u>5</u> Exhibit 16) (Annable, Zachery)</p>
01/27/2022	<p><u>3208</u> Hearing held on 1/27/2022. (RE: related document(s)<u>3086</u> Objection to claim(s) of Creditor(s) Paul N. Adkins, filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo, J. Morris, and Z. Annabel for Reorganized Debtor; P. Adkins, pro se. Evidentiary hearing. Objection sustained. Counsel to upload order.) (Edmond, Michael) (Entered: 01/28/2022)</p>
01/27/2022	<p><u>3224</u> Court admitted exhibits date of hearing January 27, 2022 (RE: related document(s)<u>3086</u> Objection to claim(s) of Creditor(s) Paul N. Adkins, filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED DEBTOR'S EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 &amp; #16 BY JOHN MORRIS &amp; ADKINS EXHIBITS #A, #B, #C, #D, #E, #F, #G, #H, #I &amp; #J BY PAUL N. ADKINS) (Edmond, Michael) (Entered: 02/08/2022)</p>

01/28/2022	<u>3207</u> Request for transcript regarding a hearing held on 1/27/2022. The requested turn-around time is hourly. (Edmond, Michael)
01/28/2022	<u>3209</u> PDF with attached Audio File. Court Date & Time [01/27/2022 02:39:06 PM]. File Size [ 19203 KB ]. Run Time [ 01:22:03 ]. (admin).
01/28/2022	<u>3261</u> DISTRICT COURT OPINION. This appeal is DISMISSED in part, and the bankruptcy court's July 21, 2021 order approving the debtor's motion for entry of an order (I) authorizing the (A) creation of an indemnity subtrust and (B) entry into an indemnity trust agreement and (II) granting related relief is AFFIRMED. (Ordered by Senior Judge Sidney A Fitzwater on 1/28/2022. Civil Action number:3:21-cv-01895-D, DISMISSED in PART and AFFIRMED in part (RE: related document(s) <u>2599</u> Order on motion for leave). Entered on 1/28/2022 (Whitaker, Sheniqua) (Entered: 02/25/2022)
01/28/2022	<u>3262</u> DISTRICT COURT JUDGMENT: This appeal is DISMISSED in part, and the bankruptcy court's 7/21/2021 Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief is AFFIRMED. Civil Action number:3:21-cv-01895-D, DISMISSED in part and AFFIRMED in part (RE: related document(s) <u>2599</u> Order on motion for leave). Entered on 2/25/2022 (Whitaker, Sheniqua) (Entered: 02/25/2022)
01/30/2022	<u>3210</u> Transcript regarding Hearing Held 01/27/2022 (60 pages) RE: Objections to Claims 65 and 66 of Paul N. Akdins <u>3086</u> . THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3208 Hearing held on 1/27/2022. (RE: related document(s) <u>3086</u> Objection to claim(s) of Creditor(s) Paul N. Adkins, filed by Debtor Highland Capital Management, L.P., (Appearances: G. Demo, J. Morris, and Z. Annabel for Reorganized Debtor; P. Adkins, pro se. Evidentiary hearing. Objection sustained. Counsel to upload order.)). Transcript to be made available to the public on 05/2/2022. (Rehling, Kathy)
01/31/2022	<u>3211</u> Subpoena on Alexander McGeoch filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
01/31/2022	<u>3212</u> Subpoena on Mark Patrick filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
01/31/2022	<u>3213</u> Notice of hearing filed by Interested Party CPCM, LLC (RE: related document(s) <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> ) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/28/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3192</u> , (Smith, Frances)
01/31/2022	<u>3214</u> Certificate of service re: Notice of Hearing filed by Interested Party CPCM, LLC (RE: related document(s) <u>3213</u> Notice of hearing). (Smith, Frances)
02/01/2022	<u>3215</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust, Mark S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust, and Thomas Surgent. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3128</u> Motion for 2004 examination of Thomas Surgent.). (Annable, Zachery)

02/01/2022	<u>3216</u> Order regarding objection to claim number(s) 65 and 66 filed by Paul N. Adkins (RE: related document(s) <u>3086</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022 (Okafor, Marcey)
02/01/2022	<u>3217</u> Hearing held on 2/1/2022. (RE: related document(s) <u>3128</u> Motion for 2004 examination of Thomas Surgent, filed by Creditor The Dugaboy Investment Trust) (Appearances: D. Draper for Dugaboy; J. Kroop for Highland. Nonevidentiary hearing. Announcement of agreed order to be uploaded.) (Edmond, Michael)
02/01/2022	<u>3218</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims nos. 141, 142, and 145 (RE: related document(s) <u>3190</u> Stipulation filed by Interested Party James Dondero). Entered on 2/1/2022 (Okafor, Marcey)
02/01/2022	<u>3219</u> Order approving stipulation and agreed order authorizing service of a subpoena duces tecum and ad testificandum in the pending adversary proceeding (RE: related document(s) <u>3215</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022 (Okafor, Marcey)
02/01/2022	<u>3220</u> Response opposed to (related document(s): <u>3178</u> Motion by CLO Holdco, Ltd.. filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # <u>1</u> Exhibit 1 – Newman Declaration) (Montgomery, Paige)
02/01/2022	<u>3221</u> Certificate of service re: Various Documents Served on January 27, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3198</u> Order granting <u>3145</u> Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022., <u>3199</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3085</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3204</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3199</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3085</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/1/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3199</u> , filed by Debtor Highland Capital Management, L.P., <u>3206</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3193</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 12 # <u>2</u> Exhibit 13 # <u>3</u> Exhibit 14 # <u>4</u> Exhibit 15 # <u>5</u> Exhibit 16) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/04/2022	<u>3222</u> Certificate of service re: Various Documents Served on February 1, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3215</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust, Mark S. Kirschner, as Litigation Trustee of the Highland Litigation Sub-Trust, and Thomas Surgent. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3128</u> Motion for 2004 examination of Thomas Surgent.). filed by Debtor Highland Capital Management, L.P., <u>3216</u> Order regarding objection to claim number(s) 65 and 66 filed by Paul N. Adkins (RE: related document(s) <u>3086</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022, <u>3219</u> Order approving stipulation and agreed order authorizing service of a subpoena duces tecum and ad testificandum in the pending adversary proceeding (RE: related document(s) <u>3215</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/1/2022). (Kass, Albert)
02/08/2022	<u>3223</u> Reply to (related document(s): <u>3177</u> Response to objection to claim filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., <u>3220</u> Response filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust) filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)

02/08/2022	<u>3225</u> PDF with attached Audio File. Court Date & Time [02/01/2022 08:45:14 AM]. File Size [ 3669 KB ]. Run Time [ 00:15:48 ]. (admin).
02/08/2022	<u>3226</u> Statement of issues on appeal, filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3196</u> Notice of appeal). (Vasek, Julian)
02/08/2022	<u>3227</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3196</u> Notice of appeal). Appellee designation due by 02/22/2022. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D)(Vasek, Julian)
02/09/2022	<u>3228</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3227</u> Appellant designation). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E)(Vasek, Julian)
02/09/2022	<u>3264</u> DISTRICT COURT MEMORANDUM OPINION AND ORDER – The Recusal Order is not a final, appealable order, is not subject to the collateral order doctrine, and is not an appealable interlocutory order under § 1292(a) and the Court is without jurisdiction over this appeal of the Bankruptcy Court's Recusal Order. The Court further denies Appellants leave to appeal the Recusal Order under § 1292(b), denies Appellants' request to withdraw the reference of their motion to recuse, and denies Appellants' request to construe their appeal as a petition for writ of mandamus. Accordingly, the Court dismisses this appeal for lack of jurisdiction. (Ordered by Judge Ed Kinkeade on 2/9/2022). Civil Action number:3:21-cv-00879-K, DISMISSED for lack of jurisdiction (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Entered on 2/9/2022 (Whitaker, Sheniqua) Modified on 2/25/2022 (Whitaker, Sheniqua). (Entered: 02/25/2022)
02/10/2022	<u>3230</u> Reply to (related document(s): <u>3205</u> Response to objection to claim filed by Interested Party CPCM, LLC) ( <i>Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No-Liability Claims, as Supplemented</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Appendix A) (Annable, Zachery)
02/10/2022	<u>3231</u> Notice of docketing notice of appeal. Civil Action Number: 3:22-CV-00335-L. (RE: related document(s) <u>3196</u> Notice of appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3180</u> Order regarding objection). (Blanco, J.)
02/10/2022	<u>3232</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No-Liability Claims, as Supplemented</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3230</u> Reply). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16) (Annable, Zachery)
02/11/2022	<u>3233</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3196</u> Notice of appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3180</u> Order regarding objection). (Blanco, J.)
02/11/2022	<u>3234</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3196</u> Notice of appeal filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>3180</u> Order regarding objection). (Blanco, J.)
02/11/2022	<u>3236</u> Certificate of service re: 1) Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No-Liability Claims, as Supplemented; and 2) Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to

	<p>Certain No–Liability Claims, as Supplemented Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3230</u> Reply to (related document(s): <u>3205</u> Response to objection to claim filed by Interested Party CPCM, LLC) (<i>Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No–Liability Claims, as Supplemented</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Appendix A) filed by Debtor Highland Capital Management, L.P., <u>3232</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No–Liability Claims, as Supplemented</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3230</u> Reply). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/15/2022	<p><u>3237</u> Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>3177</u> Response opposed to (related document(s): <u>3001</u> Objection to claim filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust) and <i>Motion to Ratify Second Amendment to Proof of Claim</i> filed by Creditor CLO Holdco, Ltd., <u>3178</u> Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd.. (RE: related document(s)<u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean–Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.)). Hearing to be held on 3/10/2022 at 10:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3178</u> and for <u>3177</u>, (Phillips, Louis)</p>
02/15/2022	<p><u>3238</u> Stipulation by Highland Capital Management, L.P. and CPCM, LLC, Isaac Leventon, Scott Ellington, and Highgate Consulting, Inc. d/b/a Skyview Group. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim, <u>2976</u> Objection to claim). (Annable, Zachery)</p>
02/16/2022	<p><u>3239</u> Response opposed to (related document(s): <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims (<i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy filed by Interested Party CPCM, LLC</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
02/16/2022	<p><u>3240</u> Hearing held on 2/16/2022. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School, filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo and R. Feinstein for Reorganized Debtor; F. Smith for Claimants. Nonevidentiary announcement of a Stipulation and Agreed Order accepted. Counsel to upload order.) (Edmond, Michael)</p>
02/16/2022	<p><u>3241</u> Hearing held on 2/16/2022. (RE: related document(s)<u>2976</u> AmendedSupplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal</p>

	<p>Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)<a href="#">2059</a> Objection to claim filed by Debtor Highland Capital Management, L.P., <a href="#">2974</a> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School, filed by Debtor Highland Capital Management, L.P. (Appearances: G. Demo and R. Feinstein for Reorganized Debtor; F. Smith for Claimants. Nonevidentiary announcement of a Stipulation and Agreed Order accepted. Counsel to upload order.) (Edmond, Michael)</p>
02/16/2022	<p><a href="#">3242</a> Objection to (related document(s): <a href="#">3088</a> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Scott Ellington. (Smith, Frances)</p>
02/16/2022	<p><a href="#">3243</a> Certificate of service re: Scott Ellingtons Objection to the Reorganized Debtors Motion for Entry of an Order Approving Settlement with Patrick Daugherty filed by Creditor Scott Ellington (RE: related document(s)<a href="#">3242</a> Objection). (Smith, Frances)</p>
02/17/2022	<p><a href="#">3244</a> Order approving stipulation and agreed order resolving third omnibus objection and certain other claims (RE: related document(s)<a href="#">3238</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/17/2022 (Okafor, Marcey). Related document(s) <a href="#">2868</a> Application for administrative expenses <i>for rank-and-file employees</i> filed by Interested Party CPCM, LLC. MODIFIED linkage on 7/6/2022 (Ecker, C.).</p>
02/17/2022	<p><a href="#">3245</a> Certificate of service re: Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3238</a> Stipulation by Highland Capital Management, L.P. and CPCM, LLC, Isaac Leventon, Scott Ellington, and Highgate Consulting, Inc. d/b/a Skyview Group. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">2059</a> Objection to claim, <a href="#">2976</a> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/18/2022	<p><a href="#">3246</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">3199</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<a href="#">3085</a> Order on motion to extend/shorten time)). (Annable, Zachery)</p>
02/18/2022	<p><a href="#">3247</a> Certificate of service re: (Supplemental) re Order Granting Reorganized Debtor's and Claimant Trustee's Joint Motion and Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Debtor May Object to Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3198</a> Order granting <a href="#">3145</a> Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022.). (Kass, Albert)</p>
02/18/2022	<p><a href="#">3248</a> Certificate of service re: Reorganized Debtor's Opposition to Motion to Quash Subpoena Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3239</a> Response opposed to (related document(s): <a href="#">3192</a> Amended Motion to quash (related documents <a href="#">3191</a> Motion to quash (related documents <a href="#">2940</a> Amended Motion to disallow claims (<i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank</i></p>

	<i>Waterhouse Pursuant to Bankruptcy filed by Interested Party CPCM, LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
02/18/2022	<u>3249</u> Certificate of service re: Order Approving Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3244</u> Order approving stipulation and agreed order resolving third omnibus objection and certain other claims (RE: related document(s) <u>3238</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/17/2022). (Kass, Albert)
02/22/2022	<u>3250</u> Appellee designation of contents for inclusion in record of appeal filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (RE: related document(s) <u>3196</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(Montgomery, Paige)
02/23/2022	<u>3251</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3128</u> Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust) Responses due by 3/2/2022. (Ecker, C.)
02/24/2022	<u>3252</u> Witness and Exhibit List filed by Creditor Frank Waterhouse, Interested Party CPCM, LLC (RE: related document(s) <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Smith, Frances)
02/24/2022	<u>3253</u> Certificate of service re: Frank Waterhouse and CPCM, LLCs Witness & Exhibit List filed by Interested Party CPCM, LLC, Creditor Frank Waterhouse (RE: related document(s) <u>3252</u> List (witness/exhibit/generic)). (Smith, Frances)
02/24/2022	<u>3254</u> Witness and Exhibit List filed by Creditor Scott Ellington (RE: related document(s) <u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. ( <i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Exhibit 1) (Smith, Frances)
02/24/2022	<u>3255</u> Certificate of service re: Scott Ellingtons Witness & Exhibit List filed by Creditor Scott Ellington (RE: related document(s) <u>3254</u> List (witness/exhibit/generic)). (Smith, Frances)
02/24/2022	<u>3256</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document # <u>3199</u> . Entered on 2/24/2022. (Okafor, Marcey)
02/24/2022	<u>3257</u> Reply to (related document(s): <u>3242</u> Objection filed by Creditor Scott Ellington) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2022	<u>3258</u> Joinder by <i>Joinder in Reply</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>3257</u> Reply). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Brookner, Jason)
02/24/2022	<u>3259</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy</i> )). (Annable, Zachery)
02/24/2022	

	<p><u>3263</u> DISTRICT COURT NOTICE OF APPEAL as to 45 Judgment, 44 Memorandum Opinion and Order, to the Fifth Circuit by Highland Capital Management Fund Advisors LP, NexPoint Advisors LP, The Dugaboy Investment Trust. Civil Case 3:21-cv-01895-D (RE: related document(s)<u>2673</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua) MODIFIED to add USCA Case 22-10189 on 5/12/2022 (Whitaker, Sheniqua). (Entered: 02/25/2022)</p>
02/24/2022	<p><u>3397</u> DISTRICT COURT NOTICE OF APPEAL as to 45 Judgment, 44 Memorandum Opinion and Order, to the Fifth Circuit by Highland Capital Management Fund Advisors LP, NexPoint Advisors LP, The Dugaboy Investment Trust (RE: related document(s)<u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2599</u> Order on motion for leave). (Whitaker, Sheniqua) (Entered: 07/08/2022)</p>
02/25/2022	<p><u>3260</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)). Hearing to be held on 3/10/2022 at 10:30 AM <a href="https://uscourts.webex.com/meet/jerniga">https://uscourts.webex.com/meet/jerniga</a>. <u>3001</u>, (Montgomery, Paige) MODIFIED to correct hearing location on 2/25/2022 (Ecker, C.).</p>
02/25/2022	<p><u>3265</u> Amended Witness and Exhibit List filed by Creditor Scott Ellington (RE: related document(s)<u>3254</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SE-1 Plaintiff's Original Petition # <u>2</u> Exhibit SE-2 Claimant Trust Agreement # <u>3</u> Exhibit SE-3 Revisions to Claimant Trust Agreement # <u>4</u> Exhibit SE-4 Transcript) (Smith, Frances)</p>
02/25/2022	<p><u>3267</u> Amended Witness and Exhibit List (<i>Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on February 28, 2022</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3259</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)</p>
02/25/2022	<p><u>3268</u> Certificate of service re: (Supplemental) re Various Documents Served on February 23, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.), <u>2870</u> Notice (<i>First Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCMC, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul</p>

	<p>Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021. filed by Debtor Highland Capital Management, L.P., <u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021. filed by Debtor Highland Capital Management, L.P., <u>3025</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3006</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2828</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 12/1/2021.). Hearing to be held on 12/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3006</u>, filed by Debtor Highland Capital Management, L.P., <u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3148</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3145</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/25/2022	<p><u>3269</u> Certificate of service re: Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on February 28, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3267</u> Amended Witness and Exhibit List (<i>Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on February 28, 2022</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3259</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/26/2022	<p><u>3270</u> Witness and Exhibit List (<i>Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held March 1, 2022</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Annable, Zachery)</p>
02/28/2022	<p><u>3271</u> Clerk's correspondence requesting an order (RE: related document(s)<u>1154</u> Motion for leave to <i>Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed Order)) Responses due by 3/7/2022. (Ecker, C.)</p>
02/28/2022	<p><u>3272</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>2868</u> Application for administrative expenses <i>for rank-and-file employees</i> Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order), <u>2869</u> Application for administrative expenses Filed by Interested Party CPCM, LLC (Attachments: # 1 Proposed Order)) Responses due by 3/15/2022. (Ecker, C.)</p>
02/28/2022	<p><u>3273</u> Motion to continue hearing on (related documents <u>2940</u> Motion to disallow claims) (<i>Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>

02/28/2022	<u>3274</u> INCORRECT EVENT: Attorney to refile. Motion to file document under seal.CPCM, LLC's Unopposed Motion to Seal Exhibits Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances) Modified on 3/1/2022 (Ecker, C.).
02/28/2022	<u>3275</u> Certificate of service re: Unopposed Motion to Seal Exhibits filed by Interested Party CPCM, LLC (RE: related document(s) <u>3274</u> Motion to file document under seal.CPCM, LLC's Unopposed Motion to Seal Exhibits). (Attachments: # <u>1</u> Exhibit Service List) (Smith, Frances)
02/28/2022	<u>3276</u> Certificate of service re: Witness & Exhibit List for hearings scheduled March 1, 2022 at 1:30 PM filed by Creditor Scott Ellington (RE: related document(s) <u>3265</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit Service List) (Smith, Frances)
02/28/2022	<u>3277</u> Motion to appear pro hac vice for Leah M. Ray. Fee Amount \$100 Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (Montgomery, Paige)
02/28/2022	<u>3278</u> Certificate of service re: 1) Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Reorganized Debtor's Reply in Further Support of Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205); and 3) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on February 28, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3256</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document # <u>3199</u> . Entered on 2/24/2022., <u>3257</u> Reply to (related document(s): <u>3242</u> Objection filed by Creditor Scott Ellington) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3259</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2022	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A29357887, amount \$ 100.00 (re: Doc# <u>3277</u> ). (U.S. Treasury)
02/28/2022	<u>3279</u> Hearing held on 2/28/2022. (RE: related document(s) <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502) (related document(s): <u>2857</u> ) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC., (Appearances: G. Demo for Reorganized Debtor; D. Dandeneau for F. Waterhouse and CPCM. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 03/01/2022)
02/28/2022	Hearing NOT held on 2/28/2022. (RE: related document(s) <u>2940</u> Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502) (related document(s): <u>2857</u> ) Filed by Debtor Highland Capital Management, L.P. (NOTE* Continued to date TBD) (Edmond, Michael) (Entered: 03/01/2022)
02/28/2022	<u>3302</u> Court admitted exhibits date of hearing February 28, 2022 (RE: related document(s) <u>3192</u> Amended Motion to quash (related documents <u>3191</u> Motion to quash (related documents <u>2940</u> Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code

	Section 502) (related document(s): <a href="#">2857</a> ) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC., (COURT ADMITTED FRANK WATERHOUSE & CPCM, LLC EXHIBIT #FWCPCM-2 OFFERED BY DEBRA A. DANDENEAU) (Edmond, Michael) (Entered: 03/08/2022)
03/01/2022	<a href="#">3280</a> Request for transcript regarding a hearing held on 2/28/2022. The requested turn-around time is hourly. (Edmond, Michael)
03/01/2022	<a href="#">3281</a> Motion to redact/restrict Redact (related document(s): <a href="#">3205</a> , <a href="#">3232</a> ) (Fee Amount \$26) Filed by Interested Party CPCM, LLC (Attachments: # <a href="#">1</a> Proposed Order) (Smith, Frances)
03/01/2022	Receipt of filing fee for Motion to Redact/Restrict From Public View( <a href="#">19-34054-sgi11</a> ) [motion,mredact] ( 26.00). Receipt number A29362549, amount \$ 26.00 (re: Doc# <a href="#">3281</a> ). (U.S. Treasury)
03/01/2022	<a href="#">3282</a> Order granting motion to continue hearing on (related document # <a href="#">3273</a> ) (related documents Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <a href="#">2857</a> )) The Hearing on the Waterhouse Motion is hereby continued from February 28, 2022 at 1:30 p.m. (Central Time) to a date that is mutually agreeable to HCMLP, CPCM, and this Court and that comes after an order is entered resolving the Motion to Quash. Entered on 3/1/2022. (Okafor, Marcey)
03/01/2022	<a href="#">3283</a> Hearing held on 3/1/2022. (RE: related document(s) <a href="#">3088</a> Motion to compromise controversy with Patrick Hagaman Daugherty, (Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Morris for Debtor; T. Uebler for P. Daugherty; D. Dandeneau for S. Ellington. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 03/02/2022)
03/01/2022	<a href="#">3301</a> Court admitted exhibits date of hearing March 1, 2022 (RE: related document(s) <a href="#">3088</a> Motion to compromise controversy with Patrick Hagaman Daugherty. Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED REORGANIZED DEBTOR/HIGHLAND CAPITAL MANAGEMENT, L.P., EXHIBITS #1, #2, #3, #4 & #5 OFFERED BY JOHN A. MORRIS AND SCOTT ELLINGTON'S EXHIBIT #SE-2; OFFERED BY DEBRA A. DANDENEAU). (Edmond, Michael) (Entered: 03/08/2022)
03/02/2022	<a href="#">3284</a> Transcript regarding Hearing Held 02/28/2022 (49 pages) RE: Debtor's Amended Motion to Disallow Claim of Frank Waterhouse (2940) and Amended Motion to Quash Subpoena filed by Frank Waterhouse (3192). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/31/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <a href="#">3279</a> Hearing held on 2/28/2022. (RE: related document(s) <a href="#">3192</a> Amended Motion to quash (related documents <a href="#">3191</a> Motion to quash (related documents <a href="#">2940</a> Amended Motion to disallow claims (Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502) (related document(s): <a href="#">2857</a> ) filed b filed by Interested Party CPCM, LLC) Filed by Interested Party CPCM, LLC., (Appearances: G. Demo for Reorganized Debtor; D. Dandeneau for F. Waterhouse and CPCM. Evidentiary hearing. Motion denied. Counsel to upload order.)). Transcript to be made available to the public on 05/31/2022. (Rehling, Kathy)
03/02/2022	<a href="#">3285</a> Request for transcript regarding a hearing held on 3/1/2022. The requested turn-around time is 7-day expedited. (Edmond, Michael)

03/02/2022	<u>3286</u> Order granting motion to appear pro hac vice adding Leah M. "Calli" Ray for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (related document <u>3277</u> ) Entered on 3/2/2022. (Okafor, Marcey) MODIFIED attorney name on 3/2/2022 (Okafor, Marcey).
03/02/2022	<u>3287</u> PDF with attached Audio File. Court Date & Time [02/16/2022 12:48:46 PM]. File Size [ 3441 KB ]. Run Time [ 00:14:46 ]. (admin).
03/03/2022	<u>3288</u> <i>Withdrawal Notice of Withdrawal of Motion of CPCM, LLC for Allowance and Payment of Administrative Expense Claims</i> filed by Interested Party CPCM, LLC (RE: related document(s) <u>2869</u> Application for administrative expenses, <u>3272</u> Clerk's correspondence). (Attachments: # <u>1</u> Exhibit A & B Service Lists) (Smith, Frances)
03/03/2022	<u>3289</u> PDF with attached Audio File. Court Date & Time [02/28/2022 01:34:24 PM]. File Size [ 29688 KB ]. Run Time [ 02:09:23 ]. (admin).
03/03/2022	<u>3290</u> Trustee's Objection to <i>Motion to Redact/Restrict from Public View</i> (RE: related document(s) <u>3281</u> Motion to Redact/Restrict From Public View) (Lambert, Lisa)
03/03/2022	<u>3291</u> Order denying amended Frank Waterhouse's opposed motion to quash (related document # <u>3192</u> ) Entered on 3/3/2022. (Okafor, Marcey)
03/03/2022	<u>3292</u> Certificate of service re: 1) Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held March 1, 2022; and 2) Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3270</u> Witness and Exhibit List ( <i>Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held March 1, 2022</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty. ( <i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) filed by Debtor Highland Capital Management, L.P., <u>3273</u> Motion to continue hearing on (related documents <u>2940</u> Motion to disallow claims) ( <i>Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/04/2022	<u>3293</u> PDF with attached Audio File. Court Date & Time [03/01/2022 01:32:46 PM]. File Size [ 29688 KB ]. Run Time [ 02:09:23 ]. (admin).
03/04/2022	<u>3294</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3128</u> Motion for 2004 examination of Thomas Surgent. Filed by Creditor The Dugaboy Investment Trust) Responses due by 3/18/2022. (Ecker, C.)
03/04/2022	<u>3295</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3286</u> Order granting motion to appear pro hac vice adding Leah M. "Calli" Ray for Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (related document <u>3277</u> ) Entered on 3/2/2022. (Okafor, Marcey) MODIFIED attorney name on 3/2/2022 .) No. of Notices: 1. Notice Date 03/04/2022. (Admin.)
03/07/2022	<u>3296</u> Witness and Exhibit List <i>With Respect To Hearing To Be Held On March 10, 2022</i> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3178</u> Motion by CLO Holdco, Ltd.). (Attachments: # <u>1</u> Exhibit 1 – POC 133 # <u>2</u> Exhibit 2 – POC 198 # <u>3</u> Exhibit 3 – POC 254 # <u>4</u> Exhibit 4 – Second Amended and Restated Service Agreement, Dated January 1, 2017 # <u>5</u> Exhibit 5 – Second Amended and Restated Investment Advisory Agreement # <u>6</u> Exhibit 6 – Registration of Members of CLO HoldCo, Ltd. # <u>7</u> Exhibit 7 – Termination of

	Second Amended and Restated Investment Advisory # 8 Exhibit 8 – Termination of Second Amended and Restated Service Agreement # 9 Exhibit 9 – Dkt. No. 2700) (Phillips, Louis)
03/07/2022	<u>3297</u> Certificate of service re: Order Continuing Hearing on Motion to Continue Hearing on the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3282</u> Order granting motion to continue hearing on (related document <u>3273</u> ) (related documents Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> )) The Hearing on the Waterhouse Motion is hereby continued from February 28, 2022 at 1:30 p.m. (Central Time) to a date that is mutually agreeable to HCMLP, CPCM, and this Court and that comes after an order is entered resolving the Motion to Quash. Entered on 3/1/2022.). (Kass, Albert)
03/08/2022	<u>3298</u> Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Debtor Highland Capital Management, L.P. ( (related document # <u>3088</u> ) Entered on 3/8/2022. (Okafor, Marcey)
03/08/2022	<u>3299</u> DUPLICATE ENTRY: See # <u>3298</u> – Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Debtor Highland Capital Management, L.P. ( (related document <u>3088</u> ) Entered on 3/8/2022. (Okafor, Marcey) Modified on 3/8/2022 (Okafor, Marcey).
03/08/2022	<u>3300</u> Order Denying Motion to Redact or Restrict Access (Related Doc # <u>3281</u> ) Entered on 3/8/2022. (Okafor, Marcey)
03/09/2022	<u>3304</u> Emergency Motion to continue hearing on (related documents <u>3178</u> Generic motion) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/09/2022	<u>3305</u> Order granting motion to continue hearing on (related document # <u>3304</u> ) (related documents Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. ) Hearing to be held on 5/2/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3178</u> , Entered on 3/9/2022. (Okafor, Marcey)
03/09/2022	<u>3306</u> Transcript regarding Hearing Held 03/01/2022 (86 pages) RE: Motion to Compromise Controversy with Patrick Hagaman Daugherty (#3088). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/7/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3283 Hearing held on 3/1/2022. (RE: related document(s) <u>3088</u> Motion to compromise controversy with Patrick Hagaman Daugherty, (Reorganized Debtor's Motion for Entry of an Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Morris for Debtor; T. Uebler for P. Daugherty; D. Dandeneau for S. Ellington. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 06/7/2022. (Rehling, Kathy)
03/09/2022	<u>3307</u> Notice ( <i>Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/09/2022	<u>3308</u> Certificate of service re: Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3298</u> Order Approving Settlement with Patrick Hagaman Daugherty (Claim No. 205) and Authorizing Actions Consistent Therewith Filed by Debtor Highland Capital Management, L.P. ( (related

	document <u>3088</u> ) Entered on 3/8/2022.). (Kass, Albert)
03/10/2022	<u>3309</u> Certificate of service re: Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3307</u> Notice ( <i>Second Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/15/2022	<u>3310</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: 2 Volume 1, Mini Record. Number of appellant volumes: 72 Number of appellee volumes: 5. Civil Case Number: 3:21-CV-03086-K Consolidated (RE: related document(s) <u>3077</u> Notice of appeal <i>Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP (RE: related document(s)<u>3047</u> Order on application for compensation).</i> (Blanco, J.)
03/15/2022	<u>3311</u> Notice of docketing COMPLETE record on appeal. 3:21-CV-03086-K Consolidated (RE: related document(s) <u>3077</u> Notice of appeal (RE: related document(s) <u>3047</u> Order on application for compensation) (Blanco, J.)
03/15/2022	<u>3312</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 1 Number of appellee volumes: 1. Civil Case Number: 3:22-cv-00335-L (RE: related document(s) <u>3196</u> Notice of appeal (RE: related document(s) <u>3180</u> Order regarding objection). (Blanco, J.)
03/15/2022	<u>3314</u> Notice of docketing record on appeal. 3:22-CV-00335L (RE: related document(s) <u>3196</u> Notice of appeal (RE: related document(s) <u>3180</u> Order regarding objection). (Blanco, J.)
03/17/2022	<u>3315</u> Certificate of service re: (Supplemental) re Documents Served on March 14, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>3102</u> Agreed first amended scheduling order on Debtor's third omnibus objection to certain no-liability claims (RE: related document(s) <u>2059</u> Third Omnibus objection to certain no-liability claims <u>2976</u> Amended Supplemental Omnibus Objection to certain employee claims filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> , Entered on 12/10/2021, <u>3131</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School Filed by Debtor Highland Capital Management, L.P and <u>2976</u> Amended Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy;

	<p>Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School; CPCM, LLC; NexPoint Advisors, L.P... Filed by Debtor Highland Capital Management, L.P. (related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>2974</u> Supplemental Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post, Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarathna; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 12/2/2021. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Appendix A # 2 Appendix B # 3 Exhibit A # 4 Exhibit B # 5 Exhibit C) (Annable, Zachery). Modified on 11/3/2021.). Hearing to be held on 2/16/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2976</u> and <u>2059</u>, (Annable, Zachery). MODIFIED linkage on 12/21/2021. filed by Debtor Highland Capital Management, L.P., <u>3230</u> Reply to (related document(s): <u>3205</u> Response to objection to claim filed by Interested Party CPCM, LLC) (<i>Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No-Liability Claims, as Supplemented</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Appendix A) filed by Debtor Highland Capital Management, L.P., <u>3232</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of Highland Capital Management, L.P.'s Reply in Further Support of Debtor's Third Omnibus Objection to Certain No-Liability Claims, as Supplemented</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3230</u> Reply). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/18/2022	<p><u>3316</u> Certificate of service re: (Supplemental) re Stipulation and Agreed Order Resolving Third Omnibus Objection and Certain Other Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3238</u> Stipulation by Highland Capital Management, L.P. and CPCM, LLC, Isaac Leventon, Scott Ellington, and Highgate Consulting, Inc. d/b/a Skyview Group. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim, <u>2976</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/18/2022	<p><u>3338</u> DISTRICT COURT Memorandum Opinion and Order in re: appeal on Civil Action number:3:20-cv-3390, Dismissed (RE: related document(s)<u>1302</u> Order on motion to compromise controversy). Entered on 3/18/2022 (Whitaker, Sheniqua) (Entered: 05/12/2022)</p>
03/24/2022	<p><u>3317</u> Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)</p>
03/24/2022	<p><u>3318</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3317</u> Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218)</i>)). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)</p>

03/28/2022	<p><u>3319</u> Certificate of service re: 1) Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3317</u> Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>3318</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3317</u> Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218)</i>)). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/29/2022	<p><u>3320</u> Certificate of service re: (Supplemental) re Various Documents Served on March 22, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.), <u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3148</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3145</u> Motion to extend time to object to claims Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/27/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3145</u>, filed by Debtor Highland Capital Management, L.P., <u>3198</u> Order granting <u>3145</u> Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022.). (Kass, Albert)</p>
03/30/2022	Adversary case 3:20-ap-3107 closed (Ecker, C.)
03/31/2022	<p><u>3321</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3317</u> Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/2/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3317</u>, (Annable, Zachery)</p>
03/31/2022	<p><u>3322</u> <i>Withdrawal of Attorney James A. Wright, III</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) Credit Card Receipt, <u>866</u> Order on motion to appear pro hac vice). (Hogewood, A.)</p>
04/07/2022	<p><u>3323</u> Certificate of service re: Notice of Hearing on Reorganized Debtors Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith Filed by</p>

	<p>Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3321</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">3317</a> Motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218). (<i>Reorganized Debtor's Motion for Entry of an Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/2/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3317</a>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/08/2022	<p><a href="#">3324</a> Certificate of service re: (Supplemental) re Order Granting Reorganized Debtor's and Claimant Trustee's Joint Motion and Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Debtor May Object to Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3198</a> Order granting <a href="#">3145</a> Joint Motion extending the claims objection deadline pursuant to confirmed Chapter 11 Plan by which Debtor may object to claims Entered on 1/27/2022.). (Kass, Albert)</p>
04/11/2022	<p>Adversary case 3:22-ap-3003 closed Pursuant to LBR 9070-1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60-day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60-day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Okafor, Marcey)</p>
04/21/2022	<p><a href="#">3325</a> Chapter 11 Post-Confirmation Report for the Quarter Ending: 03/31/2022 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
04/21/2022	<p><a href="#">3326</a> Chapter 11 Post-Confirmation Report for the Quarter Ending: 03/31/2022 filed by Other Professional Highland Claimant Trust. (Annable, Zachery)</p>
04/28/2022	<p><a href="#">3327</a> Agreed Motion to continue hearing on (related documents <a href="#">3001</a> Objection to claim, <a href="#">3178</a> Generic motion) Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (Montgomery, Paige)</p>
04/28/2022	<p><a href="#">3328</a> Order granting motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith (related document # <a href="#">3317</a>) Entered on 4/28/2022. (Okafor, Marcey)</p>
04/29/2022	<p><a href="#">3329</a> Order granting #<a href="#">3327</a> motion to continue hearing on (RE: <a href="#">3178</a> Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. (related document(s) <a href="#">3001</a> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust.) Hearing to be held on 6/28/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3178</a>, Entered on 4/29/2022. (Okafor, Marcey)</p>
05/03/2022	<p><a href="#">3330</a> Order denying motion for leave to file lawsuit (related document <a href="#">3066</a>) Entered on 5/3/2022. (Okafor, Marcey)</p>
05/03/2022	<p><a href="#">3331</a> Order denying motion for leave to Amend Certain Proofs of Claim Filed by Creditor The Dugaboy Investment Trust(related document # <a href="#">1154</a>) Entered on 5/3/2022. (Okafor, Marcey)</p>
05/03/2022	<p><a href="#">3332</a> Certificate of service re: Order Approving Settlement with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3328</a> Order granting motion to compromise controversy with CPCM, LLC (Claim No. 217) and Frank Waterhouse (Claim No. 218) and Authorizing Actions Consistent Therewith (related document <a href="#">3317</a>) Entered on 4/28/2022.). (Kass, Albert)</p>

05/04/2022	<u>3333</u> Motion for leave to <i>File a Lawsuit</i> (related document(s) <u>3066</u> Motion for leave, <u>3134</u> Response) Filed by Creditor The Dugaboy Investment Trust Objections due by 5/25/2022. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Draper, Douglas)
05/09/2022	<u>3334</u> Memorandum of Opinion and Order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21-cv-03086-K, Dismissed (RE: related document(s) <u>3047</u> Order on application for compensation, <u>3048</u> Order on application for compensation, <u>3056</u> Order on application for compensation, <u>3057</u> Order on application for compensation, <u>3058</u> Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua)
05/09/2022	<u>3335</u> Judgment/Final order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21-cv-03086-K, Dismissed (RE: related document(s) <u>3047</u> Order on application for compensation, <u>3048</u> Order on application for compensation, <u>3056</u> Order on application for compensation, <u>3057</u> Order on application for compensation, <u>3058</u> Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua)
05/09/2022	<u>3336</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 84</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/09/2022	<u>3375</u> Memorandum of Opinion and Order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21-cv-03086-K, Dismiss Appeals as Constitutionally Moot (RE: related document(s) <u>3047</u> Order on application for compensation, <u>3048</u> Order on application for compensation, <u>3056</u> Order on application for compensation, <u>3057</u> Order on application for compensation, <u>3058</u> Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua) (Entered: 06/23/2022)
05/09/2022	<u>3376</u> Judgment/Order from District court Judge Kinkeade, re: appeal on Civil Action number:3:21-CV-03086-K, DISMISSED (RE: related document(s) <u>3047</u> Order on application for compensation, <u>3048</u> Order on application for compensation, <u>3056</u> Order on application for compensation, <u>3057</u> Order on application for compensation, <u>3058</u> Order on application for compensation). Entered on 5/9/2022 (Whitaker, Sheniqua) (Entered: 06/23/2022)
05/10/2022	<u>3337</u> Certificate of service re: Stipulation and [Proposed] Agreed Order Authorizing Withdrawal of Claim Number 84 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3336</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 84</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2022	<u>3339</u> Order approving stipulation and agreed order authorizing withdrawal of claim #84 (RE: related document(s) <u>3336</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/12/2022 (Okafor, Marcey)
05/16/2022	<u>3340</u> Withdrawal ( <i>Notice of Withdrawal of the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> )). (Annable, Zachery)
05/16/2022	<u>3341</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3256</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/16/2022	<u>3342</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3341</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3256</u>

	Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/9/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3341</u> , (Annable, Zachery)
05/17/2022	<u>3343</u> Certificate of service re: 1) Notice of Withdrawal of the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502; 2) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 3) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3340</u> Withdrawal ( <i>Notice of Withdrawal of the Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2940</u> Amended Motion to disallow claims ( <i>Amended Motion of the Reorganized Debtor to Disallow Claim of Frank Waterhouse Pursuant to Bankruptcy Code Section 502</i> ) (related document(s): <u>2857</u> )). filed by Debtor Highland Capital Management, L.P., <u>3341</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3256</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3342</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3341</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3256</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/9/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3341</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/20/2022	<u>3344</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 136</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2022	<u>3345</u> Certificate of service re: Stipulation and [Proposed] Agreed Order Authorizing Withdrawal of Claim Number 136 (Filed by Debtor Highland Capital Management, L.P.) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3344</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Claim Number 136</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2022	<u>3346</u> Response unopposed to (related document(s): <u>3333</u> Motion for leave <i>to File a Lawsuit</i> (related document(s) <u>3066</u> Motion for leave, <u>3134</u> Response) filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2022	<u>3347</u> Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. . Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
05/26/2022	<u>3348</u> AMENDED Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, <a href="mailto:kathyrehlingtranscripts@gmail.com">kathyrehlingtranscripts@gmail.com</a> , Telephone number 972-786-3063. (RE: related document(s) 1753 Hearing held on 1/14/2021. (RE:

	<p>related document(s)<a href="#">1590</a> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), 1754 Hearing held on 1/14/2021. (RE: related document(s)<a href="#">1625</a> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), 1755 Hearing held on 1/14/2021. (RE: related document(s)<a href="#">1207</a> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2022. (Rehling, Kathy) Modified to edit text on 5/26/2022 (Tello, Chris).</p>
05/26/2022	<p><a href="#">3349</a> Certificate of service re: Reorganized Debtors (I) Response to Motion for Leave to File Lawsuit and (II) Reservation of Rights Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3346</a> Response unopposed to (related document(s): <a href="#">3333</a> Motion for leave to <i>File a Lawsuit</i> (related document(s) <a href="#">3066</a> Motion for leave, <a href="#">3134</a> Response) filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/27/2022	<p><a href="#">3350</a> Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
06/01/2022	<p><a href="#">3351</a> Order approving stipulation and agreed order authorizing withdrawal of claim # 136 (RE: related document(s)<a href="#">3344</a> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/1/2022 (Okafor, Marcey)</p>
06/01/2022	<p><a href="#">3352</a> Certificate of service re: Highland Capital Management L.P.s Notice of Subpoena Directed to BH Equities, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3350</a> Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/07/2022	<p><a href="#">3353</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">3341</a> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<a href="#">3256</a> Order on motion to extend/shorten time)). (Hayward, Melissa)</p>
06/07/2022	<p><a href="#">3354</a> Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. # <a href="#">3341</a>) Entered on 6/7/2022. (Okafor, Marcey)</p>
06/07/2022	<p><a href="#">3377</a> DISTRICT COURT NOTICE OF APPEAL as to 37 Memorandum Opinion and Order,,, 38 Judgment, to the Fifth Circuit by NextPoint Advisors LP. (RE: related document(s)<a href="#">3076</a> Notice of appeal of <i>Order Granting Twenty-First and Final Fee Application of FTI Consulting, Inc.</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<a href="#">3058</a> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit Exh A to Notice of</p>

	<p>Appeal), <a href="#">3077</a> Notice of appeal <i>Order Granting Fifth and Final Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP</i>. Fee Amount \$298 filed by Interested Party NexPoint Real Estate Advisors, L.P. (RE: related document(s)<a href="#">3047</a> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal), <a href="#">3078</a> Notice of appeal <i>Order Granting Consolidated Monthly, Third Interim, and Final Application of Wilmer Cutler Pickering Hale and Dore LLP</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<a href="#">3048</a> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal), <a href="#">3079</a> Notice of appeal of <i>Order Granting Second Consolidated Monthly and Final Fee Application of Teneo Capital, LLC</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<a href="#">3056</a> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal), <a href="#">3080</a> Notice of appeal of <i>Order Granting Twenty-First Monthly and Final Fee Application of Sidley Austin LLP</i>. Fee Amount \$298 filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s)<a href="#">3057</a> Order on application for compensation). Appellant Designation due by 12/17/2021. (Attachments: # 1 Exhibit A to Notice of Appeal)) USCA Case Number 22-10575 (Whitaker, Sheniqua) (Entered: 06/23/2022)</p>
06/08/2022	<p><a href="#">3355</a> Withdrawal of claim(s): 172 and 203 Filed by Creditor Davis Deadman . (Rielly, Bill)</p>
06/09/2022	<p><a href="#">3356</a> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1568</a> Order (generic)). (Annable, Zachery)</p>
06/09/2022	<p><a href="#">3357</a> Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3354</a> Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. <a href="#">3341</a>) Entered on 6/7/2022.). (Kass, Albert)</p>
06/10/2022	<p><a href="#">3358</a> Adversary case 22-03062. ORDER REFERRING CASE 3:21-CV-1169-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by PCMG Trading Partners XXIII LP against Highland Capital Management, L.P. . Fee Amount \$350 (Attachments: # <a href="#">1</a> Original Complaint # <a href="#">2</a> Civil Cover Sheet # <a href="#">3</a> Docket Sheet from 21-CV-1169). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)</p>
06/10/2022	<p><a href="#">3359</a> Certificate of service re: Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3356</a> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1568</a> Order (generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/10/2022	<p><a href="#">3360</a> WITHDRAWN at #<a href="#">3421</a>, Motion to allow claims of <i>Todd Travers as Timely Filed, or Alternatively, to Allow Late-Filed Proof of Claim</i> Filed by Creditor Todd Travers Objections due by 7/5/2022. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Proposed Order # <a href="#">5</a> Service List) (Clontz, Megan) Modified on 7/29/2022 (Ecker, C.).</p>
06/13/2022	<p><a href="#">3361</a> Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">3360</a> Motion to allow claims of <i>Todd Travers as Timely Filed, or Alternatively, to Allow Late-Filed Proof of Claim</i>). (Annable, Zachery)</p>

06/15/2022	<u>3362</u> Certificate of service re: Certificate of Service re: <i>Stipulation Amending Response Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3361</u> Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3360</u> Motion to allow claims of <i>Todd Travers as Timely Filed, or Alternatively, to Allow Late-Filed Proof of Claim</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/16/2022	<u>3363</u> Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/16/2022	<u>3364</u> WITHDRAWN at # <u>3413</u> . Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery) MODIFIED text on 7/25/2022 (Ecker, C.).
06/16/2022	<u>3365</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3364</u> Objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
06/17/2022	<u>3367</u> Stipulation by Highland Capital Management, L.P. and John F. Yang. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3364</u> Objection to claim). (Annable, Zachery)
06/21/2022	<u>3368</u> Order approving amended stipulation and proposed scheduling order concerning proof of claim no. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>3356</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey)
06/21/2022	<u>3369</u> Order approving stipulation amending response date between Debtor and Todd Travers (RE: related document(s) <u>3361</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey) Modified text on 6/21/2022 (Okafor, Marcey).
06/21/2022	<u>3370</u> Order approving stipulation amending response date between debtor and John F. Yang (RE: related document(s) <u>3367</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey)
06/21/2022	3585 Hearing set (RE: related document(s) <u>906</u> Objection to claim Hearing to be held on 11/1/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>906</u> Hearing on merits of HCRE claim. (Ellison, T.) (Entered: 10/26/2022)
06/22/2022	<u>3371</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3333</u> Motion for leave to <i>File a Lawsuit</i> (related document(s) <u>3066</u> Motion for leave, <u>3134</u> Response) Filed by Creditor The Dugaboy Investment Trust Objections due by 5/25/2022. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)) Responses due by 7/6/2022. (Ecker, C.)
06/22/2022	<u>3372</u> Certificate of service re: Notice of Amended Subpoena, Objection to Proofs of Claim, and Declaration Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>3363</u> Subpoena on BH Equities, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3364</u> Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>3365</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of the Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3364</u> Objection to claim). (Attachments: # 1

	Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/22/2022	<u>3373</u> Order authorizing the filing of a lawsuit by Dugaboy Investments Trust in New York (related document # <u>3333</u> ) Entered on 6/22/2022. (Okafor, Marcey)
06/24/2022	<u>3378</u> Amended Notice of hearing filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean–Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)). Hearing to be held on 8/4/2022 at 02:30 PM VIDEO CONFERENCE for <u>3001</u> , (Montgomery, Paige)
06/24/2022	<u>3379</u> Certificate of service re: Stipulation Amending Response Date Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3367</u> Stipulation by Highland Capital Management, L.P. and John F. Yang. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3364</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/24/2022	<u>3380</u> Certificate of service re: 1) Order Approving Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC; 2) Order Approving Stipulation Amending Response Date; and 3) Order Approving Stipulation Amending Response Date Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3368</u> Order approving amended stipulation and proposed scheduling order concerning proof of claim no. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>3356</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022, <u>3369</u> Order approving stipulation amending response date between Debtor and Todd Travers (RE: related document(s) <u>3361</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022 (Okafor, Marcey) Modified text on 6/21/2022., <u>3370</u> Order approving stipulation amending response date between debtor and John F. Yang (RE: related document(s) <u>3367</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2022). (Kass, Albert)
06/30/2022	<u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> Filed by Creditor The Dugaboy Investment Trust (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
07/01/2022	<u>3383</u> Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/05/2022	<u>3384</u> Order denying application for administrative expenses filed by CPCM LLC (related document # <u>2868</u> ) Entered on 7/5/2022. (Okafor, Marcey)
07/05/2022	<u>3385</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/06/2022	<u>3386</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/06/2022	<u>3387</u> Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (Annable, Zachery)
07/06/2022	<u>3388</u> Notice of hearing filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3387</u> Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). Hearing to be held

	on 8/3/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3387</u> , (Annable, Zachery)
07/06/2022	<u>3389</u> Certificate of service re: Highland Capital Management L.P.s Notice of Subpoena Directed to Barker Viggato LLP Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3383</u> Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2022	<u>3390</u> Certificate of service re: Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3385</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2022	<u>3391</u> Notice ( <i>Third Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	<u>3392</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	<u>3393</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	<u>3394</u> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/07/2022	<u>3395</u> Certificate of service re: (Amended) re Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>3385</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3390</u> Certificate of service re: Highland Capital Management, L.P.'s Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3385</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2022	<u>3396</u> Certificate of service re: 1) Highland Capital Management, L.P.s Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC; 2) Reorganized Debtor and Claimant Trustee Joint Motion for Entry of an Order Further Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Reorganized Debtor May Object to Certain Claims; and 3) Notice of Hearing on Reorganized Debtor and Claimant Trustee Joint Motion for Entry of an Order Further Extending the Claims Objection Deadline Pursuant to Confirmed Chapter 11 Plan by Which Reorganized Debtor May Object to Certain Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3386</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3387</u> Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, <u>3388</u> Notice of hearing filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3387</u> Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3387</u> , filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)

07/08/2022	<u>3398</u> Certificate of service re: Third Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3391</u> Notice ( <i>Third Notice of Allowed Claims Pursuant to the Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/12/2022	<u>3399</u> Certificate of service re: 1) Highland Capital Management L.P.s Notice of Subpoena to James Dondero; 2) Highland Capital Management L.P.s Notice of Subpoena to Matt McGraner; and 3) Highland Capital Management L.P.s Notice of Subpoena to Mark Patrick Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3392</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3393</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3394</u> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/12/2022	<u>3895</u> DISTRICT COURT Order: On 5/4/2021, the Fifth Circuit granted direct appeal in 21cv538. On 6/2/2021, direct appeal was also granted in 21cv539, 21cv546 and 21cv550 and the cases were consolidated for appeal purposes (see 5th Circuit Case No. 21-10449). Since the appeal to this Court is no longer relevant, these cases are administratively closed for statistical purposes without prejudice. (Ordered by Judge David C Godbey on 7/12/2022) (RE: related document(s) <u>2000</u> Notice of docketing notice of appeal/record, <u>2001</u> Notice of docketing notice of appeal/record, <u>2002</u> Notice of docketing notice of appeal/record, <u>2008</u> Notice of docketing notice of appeal/record). Entered on 7/12/2022 (Whitaker, Sheniqua) (Entered: 07/28/2023)
07/13/2022	<u>3400</u> Certificate of service re: Subpoena to Testify at a Deposition in Bankruptcy Case (or Adversary Proceeding) with Exhibit A filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3383</u> Subpoena). (Annable, Zachery)
07/14/2022	<u>3401</u> Order vacating order denying motion for want of prosecution (RE: related document(s) <u>3384</u> Order on application for administrative expenses). Entered on 7/14/2022 (Okafor, Marcey)
07/15/2022	<u>3402</u> Motion to extend time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust (RE: related document(s) <u>3382</u> Motion for valuation) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
07/18/2022	<u>3403</u> Certificate of service re: Reorganized Debtors Unopposed Motion to Extend Time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3402</u> Motion to extend time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust (RE: related document(s) <u>3382</u> Motion for valuation) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2022	<u>3404</u> Order granting Reorganized Debtor's <u>3402</u> Unopposed Motion and Extending Time Motion To Respond To Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Entered on 7/19/2022. (Okafor, Marcey)
07/19/2022	<u>3405</u> INCORRECT EVENT: Attorney to refile Support/supplemental document <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero (RE: related document(s) <u>2061</u> Brief). (Attachments: # <u>1</u> Appendix) (Lang, Michael) Modified on 7/20/2022 (Ecker, C.).
07/20/2022	<u>3406</u> Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support Filed by Interested Party James Dondero (Attachments: # <u>1</u> Appendix Appendix) (Lang, Michael) Modified text on 7/21/2022

	(Ecker, C.).
07/21/2022	<u>3407</u> Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3360</u> Motion to allow claims of <i>Todd Travers as Timely Filed, or Alternatively, to Allow Late-Filed Proof of Claim</i> ). (Annable, Zachery)
07/21/2022	<u>3408</u> WITHDRAWN at # <u>3420</u> . Motion to quash <i>depositions (Motion for Protection)</i> Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Gameros, Charles) MODIFIED text and terminated document on 7/28/2022 (Ecker, C.).
07/21/2022	<u>3409</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 06/30/2022 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post Confirmation Report) (Annable, Zachery)
07/21/2022	<u>3410</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 06/30/2022 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post Confirmation Report) (Annable, Zachery)
07/21/2022	<u>3411</u> Certificate of service re: Order Granting Reorganized Debtors Unopposed Motion and Extending Time to Respond to Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3404</u> Order granting Reorganized Debtor's <u>3402</u> Unopposed Motion and Extending Time Motion To Respond To Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust Entered on 7/19/2022.). (Kass, Albert)
07/25/2022	<u>3412</u> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/25/2022	<u>3413</u> Withdrawal ( <i>Notice of Withdrawal of Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang</i> ) Filed by Debtor Highland Capital Management, L.P. (related document(s) <u>3364</u> Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)
07/25/2022	<u>3414</u> Certificate of service re: Stipulation Further Amending Response Date Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3407</u> Stipulation by Highland Capital Management, L.P. and Todd Travers. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3360</u> Motion to allow claims of <i>Todd Travers as Timely Filed, or Alternatively, to Allow Late-Filed Proof of Claim</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/27/2022	<u>3415</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	<u>3416</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	<u>3417</u> Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	<u>3418</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2022	<u>3419</u> Certificate of service re: 1) Highland Capital Management L.P.s Amended Notice of Subpoena to Mark Patrick; and 2) Notice of Withdrawal of Reorganized Debtors Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang Filed by

	<p>Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3412</a> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">3413</a> Withdrawal (<i>Notice of Withdrawal of Reorganized Debtor's Objection to Proof of Claim No. 213 and Proof of Claim No. 144 Filed by John F. Yang</i>) Filed by Debtor Highland Capital Management, L.P. (related document(s)<a href="#">3364</a> Objection to claim(s) of Creditor(s) John F. Yang.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/18/2022. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/27/2022	<p><a href="#">3420</a> Withdrawal <i>OF MOTION FOR PROTECTION</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s)<a href="#">3408</a> Motion to quash <i>depositions (Motion for Protection)</i>). (Gameros, Charles)</p>
07/28/2022	<p><a href="#">3421</a> Withdrawal filed by Creditor Todd Travers (RE: related document(s)<a href="#">3360</a> Motion to allow claims of <i>Todd Travers as Timely Filed, or Alternatively, to Allow Late-Filed Proof of Claim</i>). (Clontz, Megan)</p>
08/01/2022	<p><a href="#">3422</a> Notice of hearing on <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero (RE: related document(s)<a href="#">3406</a> Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support Filed by Interested Party James Dondero (Attachments: # 1 Appendix Appendix) (Lang, Michael) Modified text on 7/21/2022 (Ecker, C.)). Hearing to be held on 8/31/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3406</a>, (Lang, Michael)</p>
08/01/2022	<p><a href="#">3423</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">3387</a> Motion to extend time to Object to Claims Pursuant to Confirmed Chapter 11 Plan). (Annable, Zachery)</p>
08/01/2022	<p><a href="#">3424</a> Order granting <a href="#">3387</a> Motion to extend to extend the claims objection deadline. Entered on 8/1/2022. (Ecker, C.)</p>
08/01/2022	<p><a href="#">3425</a> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<a href="#">3178</a> Motion by CLO Holdco, Ltd.). (Attachments: # <a href="#">1</a> Exhibit 1 – Claim #133 # <a href="#">2</a> Exhibit 2 – Claim #198 # <a href="#">3</a> Exhibit 3 – Claim #254 # <a href="#">4</a> Exhibit 4 – Second Amended and Restated Service Agreement, Dated January 1, 2017 between Highland Capital Management, L.P., and Charitable DAF Fund, L.P., Charitable DAF GP # <a href="#">5</a> Exhibit 5 – Second Amended and Restated Advisory Agreement – # <a href="#">6</a> Exhibit 6 – CLO HoldCo, Ltd. Register of Members # <a href="#">7</a> Exhibit 7 – Highland Termination Letters – Services Agreement. # <a href="#">8</a> Exhibit 8 – Highland Termination Letters – Advisory Agreement # <a href="#">9</a> Exhibit 9 – Notice of Occurrence of Effective Date # <a href="#">10</a> Exhibit 10 – John Morris Declaration in Support. # <a href="#">11</a> Exhibit 11 – Motion for Entry of Order Approving Settlement) (Phillips, Louis)</p>
08/02/2022	<p>Adversary case 3:22-ap-3062 closed (Ecker, C.)</p>
08/02/2022	<p><a href="#">3426</a> Certificate of service re: Various Documents Served on July 27, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3415</a> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">3416</a> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">3417</a> Subpoena on Barker Viggato LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">3418</a> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/02/2022	<p><a href="#">3427</a> Certificate of service re: Order Granting Reorganized Debtor and Claimant Trustee Joint Motion and Further Extending the Claims Objection Deadline Pursuant to Confirmed</p>

	Chapter 11 Plan by Which Reorganized Debtor May Object to Certain Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">3424</a> Order granting <a href="#">3387</a> Motion to extend to extend the claims objection deadline. Entered on 8/1/2022. (Ecker, C.)). (Kass, Albert)
08/03/2022	<a href="#">3428</a> Amended Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <a href="#">3425</a> List (witness/exhibit/generic)). (Attachments: # <a href="#">1</a> Exhibit 1 – Claim #133 # <a href="#">2</a> Exhibit 2 – Claim #198 # <a href="#">3</a> Exhibit 3 – Claim #254 # <a href="#">4</a> Exhibit 4 – Second Amended and Restated Service Agreement, Dated January 1, 2017 between Highland Capital Management, L.P., and Charitable DAF Fund, L.P., Charitable DAF GP # <a href="#">5</a> Exhibit 5 – Second Amended and Restated Advisory Agreement # <a href="#">6</a> Exhibit 6 – CLO HoldCo, Ltd. Register of Members # <a href="#">7</a> Exhibit 7 – Highland Termination Letters – Services Agreement # <a href="#">8</a> Exhibit 8 – Highland Termination Letters – Advisory Agreement # <a href="#">9</a> Exhibit 9 – Notice of Occurrence of Effective Date # <a href="#">10</a> Exhibit 10 – Declaration in Support of Motion for Entry of Order Approving Settlement with Exhibits # <a href="#">11</a> Exhibit 11 – Motion for Entry of Order Approving Settlement) (Phillips, Louis)
08/03/2022	<a href="#">3429</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">3424</a> Order granting <a href="#">3387</a> Motion to extend to extend the claims objection deadline. Entered on 8/1/2022. (Ecker, C.)) No. of Notices: 1. Notice Date 08/03/2022. (Admin.)
08/04/2022	<a href="#">3431</a> Hearing held on 8/4/2022. (RE: related document(s) <a href="#">3001</a> Omnibus Objection to claim(s) of Creditor(s) Jean–Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # <a href="#">1</a> Exhibit A),(APPEARANCES: L. Phillips and A. Hurt for CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Objection sustained. Mr. Loigman to submit order consistent with the courts ruling) <a href="#">3178</a> Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd. . (RE: related document(s) <a href="#">3001</a> Omnibus Objection to claim(s) of Creditor(s) Jean–Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. Responses due by 12/9/2021. (Attachments: # <a href="#">1</a> Exhibit A)) (Ecker, C.)) (APPEARANCES: L. Phillips and A. Hurt for Movant/CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Motion denied. Mr. Loigman to submit order consistent with the courts ruling.) (Smith, C) (Entered: 08/05/2022)
08/05/2022	<a href="#">3430</a> Request for transcript regarding a hearing held on 8/4/2022. The requested turn–around time is daily (Jeng, Hawaii)
08/05/2022	<a href="#">3432</a> Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/05/2022	<a href="#">3433</a> Notice of hearing ( <i>Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No–Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3432</a> Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3432</a> , (Annable, Zachery)
08/05/2022	<a href="#">3434</a> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3368</a> Order (generic)). (Annable, Zachery)
08/07/2022	<a href="#">3435</a> Transcript regarding Hearing Held 08/04/2022 (71 pages) RE: Omnibus Objection to Claims (3001); Motion to Ratify (3178). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/7/2022. Until that time

	<p>the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3431 Hearing held on 8/4/2022. (RE: related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A),(APPEARANCES: L. Phillips and A. Hurt for CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Objection sustained. Mr. Loigman to submit order consistent with the courts ruling)<u>3178</u> Motion to ratify second amended proof of claim No. 198 by CLO Holdco, Ltd.. (RE: related document(s)<u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) (Ecker, C.)) (APPEARANCES: L. Phillips and A. Hurt for Movant/CLO Holdco; R. Loigman, D. Newman, and A Lawrence for Litigation Trustee. Evidentiary hearing. Motion denied. Mr. Loigman to submit order consistent with the courts ruling.)). Transcript to be made available to the public on 11/7/2022. (Rehling, Kathy)</p>
08/08/2022	<p><u>3436</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>3354</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
08/08/2022	<p><u>3437</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3436</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>3354</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/8/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3436</u>, (Annable, Zachery)</p>
08/08/2022	<p><u>3710</u> DISTRICT COURT ORDER granting 12 Motion to Dismiss Appeal as Moot. This appeal is DISMISSED for lack of jurisdiction. (Ordered by Judge Karen Gren Scholer on 8/8/2022) re: appeal on Civil Action number:3:21-cv-02268-S, DISMISSED (RE: related document(s)<u>2812</u> Order on motion to compel). Entered on 8/8/2022 (Whitaker, Sheniqua) (Entered: 03/31/2023)</p>
08/09/2022	<p><u>3438</u> Order approving second amended stipulation and proposed scheduling order concerning proof of claim no. 146 (RE: related document(s)<u>3434</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/9/2022 (Ecker, C.)</p>
08/09/2022	<p><u>3439</u> Certificate of service re: 1) Reorganized Debtors Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service ; 2) Notice of Hearing on Reorganized Debtors Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service; and 3) Second Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3432</u> Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3433</u> Notice of hearing (<i>Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3432</u> Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/11/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3432</u>, filed by Debtor Highland Capital Management, L.P., <u>3434</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital</p>

	Management, L.P. (RE: related document(s) <a href="#">3368</a> Order (generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/09/2022	<a href="#">3440</a> Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">3436</a> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3354</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <a href="#">3437</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3436</a> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3354</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/8/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3436</a> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/10/2022	<a href="#">3441</a> Certificate of service re: Order Approving Second Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim No. 146 Filed by HCRE Partners, LLC Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">3438</a> Order approving second amended stipulation and proposed scheduling order concerning proof of claim no. 146 (RE: related document(s) <a href="#">3434</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/9/2022 (Ecker, C.)). (Kass, Albert)
08/12/2022	<a href="#">3442</a> INCORRECT EVENT: See # <a href="#">344</a> for correction 3Withdrawal ( <i>Motion to Withdraw Proof of Claim 146</i> ) filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) (RE: related document(s) <a href="#">906</a> Objection to claim). (Gameros, Charles) Modified on 8/15/2022 (Ecker, C.).
08/12/2022	<a href="#">3443</a> Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) . (Ecker, C.) (Entered: 08/15/2022)
08/15/2022	<a href="#">3444</a> Response opposed to (related document(s): <a href="#">3406</a> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <a href="#">1</a> Exhibit A) (Annable, Zachery)
08/15/2022	<a href="#">3445</a> Exhibit List ( <i>Appendix in Support of Highland Capital Management, L.P.'s Objection to Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 USC 455 and Brief in Support</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3444</a> Response). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73 # <a href="#">74</a> Exhibit 74 # <a href="#">75</a> Exhibit 75 # <a href="#">76</a> Exhibit 76 # <a href="#">77</a> Exhibit 77 # <a href="#">78</a> Exhibit 78 # <a href="#">79</a> Exhibit 79 # <a href="#">80</a> Exhibit 80 # <a href="#">81</a> Exhibit 81 # <a href="#">82</a> Exhibit 82 # <a href="#">83</a> Index 83 # <a href="#">84</a> Exhibit 84 # <a href="#">85</a> Exhibit 85 # <a href="#">86</a> Exhibit

	86) (Annable, Zachery)
08/15/2022	<u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) ( <i>Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/15/2022	<u>3447</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) ( <i>Highland Capi</i> ). (Annable, Zachery)
08/15/2022	<u>3448</u> Notice of hearing filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) (RE: related document(s) <u>3443</u> Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Ecker, C.)). Hearing to be held on 9/12/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3443</u> , (Gameros, Charles)
08/15/2022	<u>3449</u> Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.) (Entered: 08/16/2022)
08/16/2022	<u>3450</u> Motion to withdraw as attorney (Bonds Ellis Eppich Schafer Jones LLP as attorneys for Mr. Dondero) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Taylor, Clay)
08/16/2022	<u>3451</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/16/2022	<u>3452</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/16/2022	<u>3453</u> Notice to take deposition of NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/16/2022	<u>3454</u> Motion for expedited hearing(related documents <u>3446</u> Motion to strike document, <u>3449</u> Motion to compel) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/16/2022	<u>3455</u> Certificate of service re: Various Documents Served on August 15, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3444</u> Response opposed to (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>3445</u> Exhibit List ( <i>Appendix in Support of Highland Capital Management, L.P.'s Objection to Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 USC 455 and Brief in Support</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3444</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26

	<p># 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82 # 83 Index 83 # 84 Exhibit 84 # 85 Exhibit 85 # 86 Exhibit 86) filed by Debtor Highland Capital Management, L.P., <u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) (<i>Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3447</u> Declaration re: (<i>Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) (<i>Highland Capi</i>). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/17/2022	<p><u>3456</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) (<i>Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i>) Filed by Debtor Highland Capital Management, L.P., <u>3449</u> Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.)). Hearing to be held on 8/31/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3446</u> and for <u>3449</u>, (Annable, Zachery)</p>
08/17/2022	<p><u>3457</u> Order denying motion motion to ratify second amended proof of claim and expunging claim (related document # <u>3178</u>) Entered on 8/17/2022. (Ecker, C.)</p>
08/17/2022	<p><u>3458</u> Order granting motion to withdraw as attorney (attorney Clay M. Taylor; Bryan C. Assink; James Robertson Clarke; William R. Howell, Jr. and John Y. Bonds, III terminated). (related document <u>3450</u>) Entered on 8/17/2022. (Ecker, C.) MODIFIED on 8/17/2022 (Ecker, C.).</p>
08/17/2022	<p><u>3459</u> Order granting motion for expedited hearing (Related Doc# <u>3454</u>)(document set for hearing: <u>3446</u> Motion to strike document, <u>3449</u> Motion to compel) Hearing to be held on 8/31/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>3446</u> and for <u>3449</u>, Entered on 8/17/2022. (Ecker, C.)</p>
08/17/2022	<p><u>3460</u> Certificate of service re: Various Documents Served on August 16, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3451</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3452</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3453</u> Notice to take deposition of NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3454</u> Motion for expedited hearing(related documents <u>3446</u> Motion to strike document, <u>3449</u> Motion to compel) Filed by Debtor Highland Capital</p>

	Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/18/2022	<u>3461</u> Certificate of service re: 1) Notice of Hearing re: 1) Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers Depositions; and 2) Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers Depositions; and 2) Order Granting Highland Capital Management, L.P.'s Unopposed Motion to Expedite Hearings on Motions to (A) Strike Certain Letters from the Record [Docket No. 3446], or, (B) Alternatively, to Compel the Lawyers Depositions [Docket No. 3449] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3456</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) ( <i>Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i> ) Filed by Debtor Highland Capital Management, L.P., <u>3449</u> Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.)). Hearing to be held on 8/31/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3446</u> and for <u>3449</u> , filed by Debtor Highland Capital Management, L.P., <u>3459</u> Order granting motion for expedited hearing (Related Doc <u>3454</u> )(document set for hearing: <u>3446</u> Motion to strike document, <u>3449</u> Motion to compel) Hearing to be held on 8/31/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>3446</u> and for <u>3449</u> , Entered on 8/17/2022. (Ecker, C.)). (Kass, Albert)
08/19/2022	<u>3462</u> Order converting the August 31, 2022 at 9:30 AM Hearing on (A) The motion for final appealable order and supplement to motion to recuse and (B) related motions to strike and compel to a preliminary status/scheduling conference (RE: related document(s) <u>3406</u> Motion for leave filed by Interested Party James Dondero, <u>3446</u> Motion to strike document filed by Debtor Highland Capital Management, L.P., <u>3449</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Entered on 8/19/2022 (Ecker, C.)
08/22/2022	<u>3463</u> Reply to (related document(s): <u>3444</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Lang, Michael)
08/23/2022	<u>3464</u> Motion to quash <i>and for Protection</i> (related documents <u>3451</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3452</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3453</u> Notice to take deposition filed by Debtor Highland Capital Management, L.P.) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Gameros, Charles)
08/24/2022	<u>3465</u> Response opposed to (related document(s): <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/24/2022	<u>3466</u> Amended Notice of hearing filed by Interested Party James Dondero (RE: related document(s) <u>3406</u> Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support Filed by Interested Party James Dondero (Attachments: # <u>1</u> Appendix Appendix) (Lang, Michael) Modified text on 7/21/2022 (Ecker, C.), <u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) ( <i>Highland Capital Management, L.P.'s Motion to (A) Strike Letters Attached to Appendix in Support of the Dondero Parties' Supplemental Recusal Motion [Docket No. 3406], or, (B) Alternatively, to Compel the Lawyers' Depositions</i> ) Filed by Debtor Highland Capital Management, L.P., <u>3449</u> Motion to compel Lawyers' Depositions. Filed by Debtor Highland Capital Management, L.P. (Ecker, C.), <u>3462</u> Order converting the August 31, 2022 at 9:30 AM

	Hearing on (A) The motion for final appealable order and supplement to motion to recuse and (B) related motions to strike and compel to a preliminary status/scheduling conference (RE: related document(s) <u>3406</u> Motion for leave filed by Interested Party James Dondero, <u>3446</u> Motion to strike document filed by Debtor Highland Capital Management, L.P., <u>3449</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Entered on 8/19/2022 (Ecker, C.). Status Conference to be held on 8/31/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Lang, Michael)
08/24/2022	<u>3467</u> Response unopposed to (related document(s): <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> filed by Creditor The Dugaboy Investment Trust) filed by Creditor Hunter Mountain Investment Trust. (Phillips, Louis)
08/24/2022	<u>3711</u> DISTRICT COURT NOTICE OF APPEAL as to 21 Order on Motion to Dismiss to the Fifth Circuit by The Dugaboy Investment Trust. (RE: related document(s) <u>2841</u> First Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2840</u> Notice of appeal). (Attachments: # 1 Exhibit A)). USCA Case Number 22-10831. Civil case 3:21-cv-02268-S (Whitaker, Sheniqua) (Entered: 03/31/2023)
08/25/2022	<u>3468</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) Responses due by 9/1/2022. (Ecker, C.)
08/25/2022	<u>3469</u> Certificate of service re: Reorganized Debtors Objection to Motion for Determination of Value Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3465</u> Response opposed to (related document(s): <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/26/2022	<u>3470</u> Amended motion for final appealable order and proposed supplement to the record filed by Interested Party James Dondero (RE: related document(s) <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> ). (Attachments: # 1 Appendix) (Lang, Michael) MODIFIED text to match PDF on 9/1/2022 (Ecker, C.).
08/26/2022	<u>3471</u> Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s) <u>3446</u> Motion to strike (related document(s): <u>3406</u> Motion for leave <i>Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support</i> filed by Interested Party James Dondero) ( <i>Highland Capi</i> , <u>3449</u> <i>Motion to compel Lawyers' Depositions.</i> ). (Lang, Michael)
08/27/2022	<u>3472</u> BNC certificate of mailing. (RE: related document(s) <u>3468</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3001</u> Omnibus Objection to claim(s) of Creditor(s) Jean-Paul Sevilla, Scott Ellington, Isaac Leventon, Frank Waterhouse, CLO Holdco, Ltd... Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. Responses due by 12/9/2021. (Attachments: # 1 Exhibit A)) Responses due by 9/1/2022. (Ecker, C.)) No. of Notices: 1. Notice Date 08/27/2022. (Admin.)
08/30/2022	<u>3473</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3436</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related

	document(s) <u>3354</u> Order on motion to extend/shorten time)). (Annable, Zachery)
08/30/2022	<u>3474</u> Order granting <u>3436</u> Motion Further Extending the Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3354</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery Entered on 8/30/2022. (Okafor, Marcey)
08/31/2022	<u>3475</u> Notice of appeal . Fee Amount \$298 filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3457</u> Order on motion (generic)). Appellant Designation due by 09/14/2022. (Phillips, Louis)
08/31/2022	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A29787221, amount \$ 298.00 (re: Doc# <u>3475</u> ). (U.S. Treasury)
08/31/2022	<u>3476</u> Request for transcript regarding a hearing held on 8/31/2022. The requested turn-around time is 7-day expedited. (Edmond, Michael)
08/31/2022	<u>3477</u> Request for transcript, regarding a hearing held on 8/31/2022. The requested turn-around time is hourly. (Edmond, Michael) Modified on 8/31/2022 (Edmond, Michael).
08/31/2022	<u>3478</u> Hearing held on 8/31/2022. (RE: related document(s) <u>3406</u> Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support, filed by Interested Party James Dondero.) (Appearances: M. Lang for Movants; J. Pomeranz for Reorganized Debtor. Nonevidentiary status conference. Based on discussions with counsel at status conference as to what actual relief is being sought, the motion (even as currently amended) will be denied as procedurally defective. This is without prejudice to movants filing a new motion pursuant to Rule 54 seeking the simple relief of having the last sentence of this courts 3/23/21 order deleted, or a new motion to recuse, if Movants have any desire to supplement the record. Court to issue order.) (Edmond, Michael)
09/01/2022	<u>3479</u> Order denying amended motion of James Dondero, Highland Capital Management Fund Advisors, L.P., Nexpoint Advisors, L.P. The Dugaboy Investment Trust Get Good Trust and, Nexpoint Real Estate Partners, LLC, F/K/A HCRE Partners, A Delaware Limited Liability Company for final appealable order and supplement to motion to recuse pursuant to 28 U.S.C. Section 455 (RE: related document(s) <u>3470</u> Brief filed by Interested Party James Dondero). Entered on 9/1/2022 (Okafor, Marcey)
09/01/2022	<u>3480</u> Transcript regarding Hearing Held 08/31/2022 (27 pages) RE: Status Conference Re: Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 (#3406). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/30/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>3478</u> Hearing held on 8/31/2022. (RE: related document(s) <u>3406</u> Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support, filed by Interested Party James Dondero.) (Appearances: M. Lang for Movants; J. Pomeranz for Reorganized Debtor. Nonevidentiary status conference. Based on discussions with counsel at status conference as to what actual relief is being sought, the motion (even as currently amended) will be denied as procedurally defective. This is without prejudice to movants filing a new motion pursuant to Rule 54 seeking the simple relief of having the last sentence of this courts 3/23/21 order deleted, or a new motion to recuse, if Movants have any desire to supplement the record. Court to issue order.)). Transcript to be made available to the public on 11/30/2022. (Rehling, Kathy)
09/01/2022	

	<u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/01/2022	<u>3482</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Motion for an Order Approving Highland's Entry into a Settlement Agreement and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd..). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement) (Annable, Zachery)
09/02/2022	<u>3483</u> Response opposed to (related document(s): <u>3464</u> Motion to quash <i>and for Protection</i> (related documents <u>3451</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3452</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3453</u> Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRC Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2022	<u>3484</u> Motion to compel re: discovery Depositions ( <i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/02/2022	<u>3485</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3483</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
09/02/2022	<u>3486</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3484</u> Motion to compel re: discovery Depositions ( <i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
09/02/2022	<u>3487</u> Response opposed to (related document(s): <u>3443</u> Motion by HCRC Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRC Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2022	<u>3488</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3487</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16) (Annable, Zachery)
09/02/2022	<u>3489</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3481</u> , (Annable, Zachery)

09/02/2022	<u>3490</u> Motion for expedited hearing(related documents <u>3484</u> Motion to compel re: discovery) ( <i>Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/06/2022	<u>3491</u> Clerk's correspondence requesting to amend notice of appeal from attorney for creditor. (RE: related document(s) <u>3475</u> Notice of appeal . Fee Amount \$298 filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3457</u> Order on motion (generic)). Appellant Designation due by 09/14/2022.) Responses due by 9/8/2022. (Whitaker, Sheniqua)
09/06/2022	<u>3492</u> Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3474</u> Order granting <u>3436</u> Motion Further Extending the Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3354</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery Entered on 8/30/2022.). (Kass, Albert)
09/06/2022	<u>3493</u> Certificate of service re: 1) Motion for an Order Approving Highlands Entry Into a Settlement Agreement and Authorizing Actions Consistent Therewith ; and 2) Declaration of John A. Morris in Support of Motion for an Order Approving Highlands Entry Into a Settlement Agreement and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3482</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Motion for an Order Approving Highland's Entry into a Settlement Agreement and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. ). (Attachments: # 1 Exhibit 1—Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/06/2022	<u>3494</u> Certificate of service re: Various Documents Served on September 2, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3483</u> Response opposed to (related document(s): <u>3464</u> Motion to quash <i>and for Protection</i> (related documents <u>3451</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3452</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3453</u> Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3484</u> Motion to compel re: discovery Depositions ( <i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and ( <i>B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3485</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and ( <i>B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3483</u> Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., <u>3486</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and ( <i>B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3484</u> Motion to compel re: discovery Depositions ( <i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and ( <i>B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> )).

	<p>(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., <u>3487</u> Response opposed to (related document(s): <u>3443</u> Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3488</u> Declaration re: (<i>Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3487</u> Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P., <u>3489</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3481</u>, filed by Debtor Highland Capital Management, L.P., <u>3490</u> Motion for expedited hearing(related documents <u>3484</u> Motion to compel re: discovery) (<i>Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/07/2022	<p><u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>3475</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A – Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # <u>2</u> Exhibit B Notice of Appeal)(Phillips, Louis)</p>
09/07/2022	<p><u>3497</u> Certificate of mailing regarding appeal (RE: related document(s)<u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>3475</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A – Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # <u>2</u> Exhibit B Notice of Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)</p>
09/07/2022	<p><u>3498</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>3475</u> Notice of appeal .filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>3457</u> Order on motion (generic)). (Whitaker, Sheniqua)</p>
09/07/2022	<p><u>3499</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3484</u> Motion to compel re: discovery Depositions (<i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and (B) <i>Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/12/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3484</u>, (Annable, Zachery)</p>
09/07/2022	<p><u>3500</u> Certificate of service re: (Amended) re Various Documents Served on September 2, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3483</u> Response opposed to (related document(s): <u>3464</u> Motion to quash <i>and for Protection</i> (related documents <u>3451</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3452</u> Subpoena filed by Debtor Highland Capital Management, L.P., <u>3453</u> Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3484</u> Motion to compel re: discovery Depositions (<i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and (B) <i>Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3485</u> Declaration re: (<i>Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]</i> and (B) <i>Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3483</u> Response).</p>

(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3486 Declaration re: (*Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]* and (*B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions (*Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]* and (*B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition*)).

(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3487 Response opposed to (related document(s): 3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3488 Declaration re: (*Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3487 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P., 3489 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3481 Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at <https://us-courts.webex.com/meet/jerniga> for 3481, filed by Debtor Highland Capital Management, L.P., 3490 Motion for expedited hearing(related documents 3484 Motion to compel re: discovery) (*Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross-Motion to Enforce Subpoenas and to Compel a Deposition*) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3494 Certificate of service re: Various Documents Served on September 2, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)3483 Response opposed to (related document(s): 3464 Motion to quash and for Protection (related documents 3451 Subpoena filed by Debtor Highland Capital Management, L.P., 3452 Subpoena filed by Debtor Highland Capital Management, L.P., 3453 Notice to take deposition filed by Debtor filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3484 Motion to compel re: discovery Depositions (*Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]* and (*B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition*) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 3485 Declaration re: (*Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]* and (*B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3483 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3486 Declaration re: (*Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]* and (*B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3484 Motion to compel re: discovery Depositions (*Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464]* and (*B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition*)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., 3487 Response opposed to (related document(s): 3443 Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). filed by Creditor HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 3488 Declaration re: (*Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)3487 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit

	<p>10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16) filed by Debtor Highland Capital Management, L.P., <u>3489</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3481</u> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/4/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3481</u>, filed by Debtor Highland Capital Management, L.P., <u>3490</u> Motion for expedited hearing(related documents <u>3484</u> Motion to compel re: discovery) (<i>Unopposed Motion for Expedited Hearing on Reorganized Debtor's Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
09/07/2022	<p><u>3501</u> Order granting unopposed motion for expedited hearing on Reorganized Debtor's cross-motion to enforce subpoenas and to compel a deposition (Related Doc# <u>3490</u>)(document set for hearing: <u>3484</u> Motion to compel re: discovery) Hearing to be held on 9/12/2022 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>3484</u>, Entered on 9/7/2022. (Okafor, Marcey)</p>
09/08/2022	<p><u>3502</u> Certificate of service re: Notice of Hearing re: Motion to Compel re: Discovery Depositions Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3499</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3484</u> Motion to compel re: discovery Depositions (<i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/12/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3484</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/09/2022	<p><u>3503</u> Motion for leave (<i>Motion to Conform Plan</i>) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
09/09/2022	<p><u>3504</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3503</u> Motion for leave (<i>Motion to Conform Plan</i>) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3503</u>, (Annable, Zachery)</p>
09/09/2022	<p><u>3505</u> Reply to (related document(s): <u>3487</u> Response filed by Debtor Highland Capital Management, L.P.) <i>MOTION TO WITHDRAW PROOF OF CLAIM</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)</p>
09/09/2022	<p><u>3506</u> Reply to (related document(s): <u>3483</u> Response filed by Debtor Highland Capital Management, L.P.) <i>MOTION TO QUASH AND FOR PROTECTION</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)</p>
09/09/2022	<p><u>3507</u> Motion for leave to <i>File Proceeding</i> Filed by Creditor CLO Holdco, Ltd. Objections due by 9/30/2022. (Attachments: # <u>1</u> Exhibit A – Affidavit in support of the Application with Exhibits (1 of 2) # <u>2</u> Exhibit A – Affidavit in support of the Application with Exhibits (2 of 2)) (Phillips, Louis)</p>
09/09/2022	<p><u>3508</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3443</u> Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), <u>3484</u> Motion to compel re: discovery Depositions (<i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery)</p>

09/12/2022	<u>3509</u> Request for transcript regarding a hearing held on 9/12/2022. The requested turn-around time is hourly. (Edmond, Michael)
09/12/2022	<u>3510</u> Hearing held on 9/12/2022. (RE: related document(s) <u>3443</u> Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael)
09/12/2022	<u>3511</u> Hearing held on 9/12/2022. (RE: related document(s) <u>3484</u> Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
09/12/2022	<u>3512</u> Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s) <u>3484</u> Motion to compel re: discovery Depositions (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEFENDANT'S EXHIBIT'S #1 THROUGH #6 THAT APPEAR AT DOC. #3485 & #3486, OFFERED BY JOHN A. MORRIS.) (Edmond, Michael)
09/12/2022	<u>3513</u> Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s) <u>3443</u> Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), (COURT ADMITTED DEFENDANT'S EXHIBIT'S #1 THROUGH #6 THAT APPEAR AT DOC. #3485 & #3486, OFFERED BY JOHN A. MORRIS.) (Edmond, Michael).
09/12/2022	<u>3514</u> Court admitted exhibits date of hearing September 12, 2022 (RE: related document(s) <u>3484</u> Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DECLARATION OF JOHN A. MORRIS; & PLAINTIFF'S EXHIBIT'S #1 THROUGH #16, THAT APPEAR AT DOC. #3488; OFFERED BY JOHN A. MORRIS) (Edmond, Michael)
09/13/2022	<u>3515</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3503</u> Motion for leave ( <i>Motion to Conform Plan</i> ) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/26/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3503</u> , (Annable, Zachery)
09/13/2022	<u>3516</u> Certificate of service re: 1) Motion to Conform Plan; 2) Notice of Hearing re: Motion to Conform Plan; and 3) Highland Capital Management, L.P.s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on September 12, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3503</u> Motion for leave ( <i>Motion to Conform Plan</i> ) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3504</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3503</u> Motion for leave ( <i>Motion to Conform Plan</i> ) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3503</u> , filed by Debtor Highland Capital Management, L.P., <u>3508</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3443</u> Motion by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), <u>3484</u> Motion to compel re: discovery Depositions ( <i>Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital

	Management, L.P.). (Kass, Albert)
09/13/2022	<u>3517</u> Certificate of service re: Amended Notice of Hearing re: Motion to Conform Plan Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3515</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3503</u> Motion for leave ( <i>Motion to Conform Plan</i> ) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/26/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3503</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/14/2022	<u>3518</u> Order denying motion to withdraw proof of claim as moot (related document # <u>3443</u> ) Entered on 9/14/2022. (Okafor, Marcey)
09/14/2022	<u>3519</u> Transcript regarding Hearing Held 9/12/22 RE: MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443) AND REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS-MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/13/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel/Liberty Transcripts, Telephone number 847-848-4907. (RE: related document(s) 3510 Hearing held on 9/12/2022. (RE: related document(s) <u>3443</u> Motion to withdraw proof of claim #146 by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion denied. Counsel to upload order.), 3511 Hearing held on 9/12/2022. (RE: related document(s) <u>3484</u> Motion to compel re: discovery Depositions, (Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket No. 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition), filed by Debtor Highland Capital Management, L.P.) (Appearances: C. Gameros for HCRE; J. Morris for Reorganized Debtor. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 12/13/2022. (Patel, Dipti)
09/14/2022	<u>3520</u> Motion to quash ( <i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/14/2022	<u>3521</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3520</u> Motion to quash ( <i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Annable, Zachery)
09/14/2022	<u>3522</u> Order denying motion to quash and for protection as moot (related document # <u>3464</u> ) Entered on 9/14/2022. (Okafor, Marcey)
09/14/2022	<u>3523</u> Order denying cross-motion to enforce subpoenas and compel a deposition as moot (related document # <u>3484</u> ) Entered on 9/14/2022. (Okafor, Marcey)
09/14/2022	<u>3524</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3475</u> Notice of appeal, <u>3495</u> Amended notice of appeal). Appellee designation due by 09/28/2022. (Phillips, Louis)
09/15/2022	<u>3525</u> Amended Order denying motion to withdraw proof of claim (related document # <u>3443</u> ) Entered on 9/15/2022. (Okafor, Marcey)

09/15/2022	<u>3526</u> Certificate of service re: 1) The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order; and 2) Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3520</u> Motion to quash ( <i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3521</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3520</u> Motion to quash ( <i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/15/2022	<u>3527</u> Notice of docketing notice of appeal. Civil Action Number: 3:22-cv-02051-B. (RE: related document(s) <u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3475</u> Notice of appeal). (Attachments: # 1 Exhibit A – Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal)) (Whitaker, Sheniqua) (Entered: 09/16/2022)
09/19/2022	<u>3528</u> Notice to take deposition of Representative of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
09/19/2022	<u>3529</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
09/19/2022	<u>3530</u> Notice to take deposition of Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
09/20/2022	<u>3531</u> Stipulation by Highland Capital Management, L.P. and Department of the Treasury, Internal Revenue Service. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3432</u> Objection to claim). (Annable, Zachery)
09/20/2022	<u>3532</u> Order approving stipulation authorizing the resolution of proofs of claim 32, 173, 179, 195, 248, 250, 252, and 255 filed by The Department of the Treasury, Internal Revenue Service (RE: related document(s) <u>3531</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/20/2022 (Okafor, Marcey)
09/21/2022	<u>3533</u> Amended Motion for valuation <i>Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Related document(s) <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> filed by Creditor The Dugaboy Investment Trust. Modified to create linkage on 9/22/2022 (Ecker, C.).
09/21/2022	<u>3534</u> Certificate of service re: Various Documents Served on September 20, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3528</u> Notice to take deposition of Representative of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3529</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3530</u> Notice to take deposition of Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3531</u> Stipulation by Highland Capital Management, L.P. and Department of the Treasury, Internal Revenue Service. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3432</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>3532</u> Order approving stipulation authorizing the resolution of proofs of claim 32, 173, 179, 195, 248,

	250, 252, and 255 filed by The Department of the Treasury, Internal Revenue Service (RE: related document(s) <a href="#">3531</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/20/2022). (Kass, Albert)
09/22/2022	<a href="#">3535</a> Support/supplemental document <i>Exhibit A</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">3533</a> Supplemental Motion for valuation <i>Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> ). (Draper, Douglas)
09/22/2022	<a href="#">3563</a> DISTRICT COURT Memorandum of Opinion and Order from District court Judge Starr, re: appeal on Civil Action number:3:21-cv-01295-X, AFFIRMED (RE: related document(s) <a href="#">2389</a> Order on motion to compromise controversy). Entered on 9/22/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/26/2022	<a href="#">3536</a> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3481</a> Motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd.. ). (Annable, Zachery)
09/26/2022	<a href="#">3537</a> Order granting motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd. Filed by Debtor Highland Capital Management, L.P (related document # <a href="#">3481</a> ) Entered on 9/26/2022. (Okafor, Marcey)
09/26/2022	<a href="#">3560</a> DISTRICT COURT Final order from District court Judge Lindsay, re: appeal on Civil Action number:3:21-CV-00261-L, DISMISSED (RE: related document(s) <a href="#">1788</a> Order on motion to compromise controversy). Entered on 9/26/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/26/2022	<a href="#">3561</a> DISTRICT COURT Judgment from District court Judge Lindsay, re: notice of appeal Civil Action number:3:21-CV-00261-L, DISMISSED (RE: related document(s) <a href="#">1788</a> Order on motion to compromise controversy). Entered on 9/26/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/27/2022	<a href="#">3538</a> Clerk's correspondence requesting amended designation from attorney for appellant. (RE: related document(s) <a href="#">3524</a> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <a href="#">3475</a> Notice of appeal, <a href="#">3495</a> Amended notice of appeal). Appellee designation due by 09/28/2022.) Responses due by 9/30/2022. (Blanco, J.)
09/27/2022	<a href="#">3539</a> Response opposed to (related document(s): <a href="#">3503</a> Motion for leave ( <i>Motion to Conform Plan</i> ) (related document(s) <a href="#">1943</a> Order confirming chapter 11 plan) filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E) (Varshosaz, Artoush)
09/27/2022	<a href="#">3540</a> Joinder by <i>Joinder to Funds Response to the Motion to Conform Plan</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">3539</a> Response). (Draper, Douglas)
09/27/2022	<a href="#">3541</a> Motion to recuse Judge Stacey G. C. Jernigan Filed by Interested Party James Dondero (Lang, Michael)
09/27/2022	<a href="#">3542</a> Brief in support filed by Interested Party James Dondero (RE: related document(s) <a href="#">3541</a> Motion to recuse Judge Stacey G. C. Jernigan). (Attachments: # <a href="#">1</a> Appendix) (Lang, Michael)

09/28/2022	<u>3543</u> Notice of hearing ( <i>Notice of Status Conference and Briefing Schedule</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> Filed by Creditor The Dugaboy Investment Trust (Attachments: # 1 Exhibit A), <u>3520</u> Motion to quash ( <i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i> ) Filed by Debtor Highland Capital Management, L.P., <u>3533</u> Amended Motion for valuation <i>Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Related document(s) <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> filed by Creditor The Dugaboy Investment Trust. Modified to create linkage on 9/22/2022 (Ecker, C.). Status Conference to be held on 11/15/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
09/28/2022	<u>3544</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3524</u> Appellant designation). (Phillips, Louis)
09/28/2022	<u>3545</u> Certificate of service re: Order Approving Highlands Entry Into a Settlement Agreement and Authorizing Actions Consistent Therewith Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3537</u> Order granting motion to compromise controversy with Highland CDO Opportunity Fund, Ltd.; Highland CDO Opportunity Master Fund, L.P.; UBS Securities LLC; UBS AG London Branch; and Sentinel Reinsurance, Ltd. Filed by Debtor Highland Capital Management, L.P (related document <u>3481</u> ) Entered on 9/26/2022.). (Kass, Albert)
09/28/2022	<u>3546</u> Support/supplemental document <i>APPELLEES SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R. BANKR. P. 8009(a)(2)</i> filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (RE: related document(s) <u>3495</u> Amended notice of appeal). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Montgomery, Paige)
09/28/2022	<u>3565</u> DISTRICT COURT Memorandum of Opinion and order from District court Judge Starr, re: appeal on Civil Action number:3:21-cv-01974-X, AFFIRMS in part and VACATES in part (RE: related document(s) <u>2660</u> Memorandum of opinion). Entered on 9/28/2022 (Whitaker, Sheniqua) (Entered: 10/13/2022)
09/29/2022	<u>3547</u> (Baird, Michael) has withdrawn from the case filed by Creditor Pension Benefit Guaranty Corporation. (Baird, Michael)
09/29/2022	<u>3548</u> (Mahmooth, Faheem) has withdrawn from the case filed by Creditor Pension Benefit Guaranty Corporation. (Mahmooth, Faheem)
09/29/2022	<u>3549</u> Notice ( <i>Notice of Cancellation of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3433</u> Notice of hearing ( <i>Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3432</u> Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3432</u> .). (Annable, Zachery)
09/30/2022	<u>3550</u> Response opposed to (related document(s): <u>3507</u> Motion for leave to <i>File Proceeding</i> filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2022	

	<p><u>3551</u> Objection to (related document(s): <u>3503</u> Motion for leave (<i>Motion to Conform Plan</i>) (related document(s) <u>1943</u> Order confirming chapter 11 plan) filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)</p>
10/03/2022	<p><u>3552</u> Certificate of service re: Notice of Status Conference and Briefing Schedule Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3543</u> Notice of hearing (<i>Notice of Status Conference and Briefing Schedule</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3382</u> Motion for valuation<i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> Filed by Creditor The Dugaboy Investment Trust (Attachments: # 1 Exhibit A), <u>3520</u> Motion to quash (<i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i>) Filed by Debtor Highland Capital Management, L.P., <u>3533</u> Amended Motion for valuation<i>Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Related document(s) <u>3382</u> Motion for valuation<i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> filed by Creditor The Dugaboy Investment Trust. Modified to create linkage on 9/22/2022 (Ecker, C.). Status Conference to be held on 11/15/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a>. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/03/2022	<p><u>3553</u> Certificate of service re: Notice of Cancellation of Hearing on Reorganized Debtors Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)<u>3549</u> Notice (<i>Notice of Cancellation of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3433</u> Notice of hearing (<i>Notice of Hearing on Reorganized Debtor's Fifth Omnibus Objection to Certain (A) Amended and Superseded Claims, (B) No-Liability Claims, and (C) Satisfied Claims Filed by the Internal Revenue Service</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3432</u> Omnibus Objection to claim(s) of Creditor(s) Internal Revenue Service.. Filed by Debtor Highland Capital Management, L.P..). Hearing to be held on 10/11/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3432</u>),. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/03/2022	<p><u>3564</u> DISTRICT COURT NOTICE OF APPEAL as to 34 Memorandum Opinion and Order to the Fifth Circuit by The Dugaboy Investment Trust. (RE: related document(s)<u>2398</u> Notice of appeal <i>and Statement of Election</i>. Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>2389</u> Order on motion to compromise controversy). Civil Case 3:21-cv-01295-X, USCA Case Number 22-10983 (Whitaker, Sheniqua) (Entered: 10/13/2022)</p>
10/04/2022	<p><u>3555</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 10 . Civil Case Number: 3:22-CV-02051-B (RE: related document(s)<u>3475</u> Notice of appeal <u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd.) (Blanco, J.)</p>
10/04/2022	<p><u>3556</u> Notice of docketing COMPLETE record on appeal. 3:22-cv-02051-B (RE: related document(s)<u>3475</u> Notice of appeal )) (Blanco, J.)</p>
10/04/2022	<p><u>3557</u> Certificate of service re: Highlands Response to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3550</u> Response opposed to (related document(s): <u>3507</u> Motion for leave <i>to File Proceeding</i> filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

10/04/2022	<u>3562</u> DISTRICT COURT NOTICE OF APPEAL as to 39 Judgment, to the Fifth Circuit by The Dugaboy Investment Trust (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal.) USCA Case Number 22-10960, 3:21-cv-00261-L (Whitaker, Sheniqua) (Entered: 10/13/2022)
10/11/2022	<u>3558</u> Reply to (related document(s): <u>3550</u> Response filed by Debtor Highland Capital Management, L.P.) <i>In Support Of Motion For Leave To File Proceeding [Dkt. No. 3507]</i> filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)
10/12/2022	<u>3559</u> Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3507</u> Motion for leave to <i>File Proceeding</i> Filed by Creditor CLO Holdco, Ltd. Objections due by 9/30/2022. (Attachments: # 1 Exhibit A – Affidavit in support of the Application with Exhibits (1 of 2) # 2 Exhibit A – Affidavit in support of the Application with Exhibits (2 of 2))). Hearing to be held on 10/26/2022 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3507</u> , (Attachments: # <u>1</u> Exhibit A) (Phillips, Louis)
10/14/2022	<u>3566</u> Reply to (related document(s): <u>3539</u> Response filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>3551</u> Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2022	<u>3567</u> Agreed Scheduling Order on renewed motion to recuse (related document # <u>3541</u> ) Entered on 10/14/2022. (Okafor, Marcey)
10/14/2022	<u>3568</u> Notice of service recreation (RE: related document(s) <u>3567</u> Agreed Scheduling Order on renewed motion to recuse (related document # <u>3541</u> ) Entered on 10/14/2022.) (Okafor, Marcey)
10/17/2022	<u>3569</u> Amended Reply to (related document(s): <u>3550</u> Response filed by Debtor Highland Capital Management, L.P.) <i>to Amend and Replace Dkt. No. 3558</i> filed by Creditor CLO Holdco, Ltd.. (Phillips, Louis)
10/17/2022	<u>3570</u> Motion to recuse Judge Stacey G. C. Jernigan – AMENDED Filed by Interested Party James Dondero (Lang, Michael)
10/17/2022	<u>3571</u> Brief in support filed by Interested Party James Dondero (RE: related document(s) <u>3570</u> Motion to recuse Judge Stacey G. C. Jernigan – AMENDED). (Attachments: # <u>1</u> Appendix) (Lang, Michael)
10/17/2022	<u>3572</u> Certificate of service re: Reply in Support of Motion to Conform Plan Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>3566</u> Reply to (related document(s): <u>3539</u> Response filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>3551</u> Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/17/2022	<u>3573</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/17/2022	<u>3574</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

10/17/2022	<u>3575</u> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/17/2022	<u>3576</u> Appellee designation of contents for inclusion in record of appeal <i>**Originally filed at Docket 3546**</i> filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>3475</u> Notice of appeal, <u>3495</u> Amended notice of appeal). (Montgomery, Paige)
10/17/2022	<u>3577</u> Support/supplemental document to <i>Appellee designation of contents for inclusion in record of appeal</i> <i>**Originally filed at Docket 3546**</i> filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>3576</u> Appellee designation). (Attachments: # <u>1</u> Exhibit 2 # <u>2</u> Exhibit 3) (Montgomery, Paige)
10/18/2022	<u>3578</u> Clerk's correspondence requesting Amended Support/supplemental document to include a case caption from attorney for creditor. (RE: related document(s) <u>3577</u> Support/supplemental document to <i>Appellee designation of contents for inclusion in record of appeal</i> <i>**Originally filed at Docket 3546**</i> filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>3576</u> Appellee designation). (Attachments: # <u>1</u> Exhibit 2 # <u>2</u> Exhibit 3)) Responses due by 10/25/2022. (Ecker, C.)
10/18/2022	<u>3579</u> Transmittal of COMPLETE APPELLEE record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellee volumes: 4. Civil Case Number: 3:22–CV–02051–B (RE: related document(s) <u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3475</u> Notice of appeal). ) (Blanco, J.)
10/18/2022	<u>3580</u> Notice of docketing COMPLETE APPELLEE record on appeal. 3:22–CV–02051–B (RE: related document(s) <u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3475</u> Notice of appeal). ) (Blanco, J.)
10/19/2022	<u>3581</u> Certificate of service re: Various Documents Served on October 17, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3567</u> Agreed Scheduling Order on renewed motion to recuse (related document # <u>3541</u> ) Entered on 10/14/2022., <u>3573</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3574</u> Subpoena on Matt McGraner filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3575</u> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2022	<u>3610</u> DISTRICT COURT NOTICE OF APPEAL as to 49 Memorandum Opinion and Order to the Fifth Circuit by Jonathan Bridges, CLO Holdco Ltd, Mark Patrick, Mazin A Sbaiti, Sbaiti & Company PLLC, The Charitable DAF Fund LP. (RE: related document(s) <u>2876</u> Notice of docketing COMPLETE record on appeal. 3:21–CV–01974–X (RE: related document(s) <u>2713</u> Notice of appeal <u>2660</u> Memorandum of opinion. <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Blanco, J.)) USCA Case Number 22–11036 (Whitaker, Sheniqua) (Entered: 11/03/2022)
10/21/2022	<u>3582</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: 09/30/2022 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post–Confirmation Report) (Annable, Zachery)
10/21/2022	<u>3583</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: 09/30/2022 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post–Confirmation Report) (Annable, Zachery)

10/25/2022	<u>3584</u> Agreed order on motion for leave to file proceeding (related document # <u>3507</u> ) (Attachments: # <u>1</u> Redline Application and Affidavit (without exhibits)) Entered on 10/25/2022. (Okafor, Marcey)
10/26/2022	<u>3586</u> Hearing held on 10/26/2022. (RE: related document(s) <u>3503</u> Motion for leave, (Motion to Conform Plan) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Reorganized Debtor; L. Hogewood for 5 Funds; J. Ong for NexPoint Advisors and HCMFA; D. Draper for Dugaboy. Nonevidentiary hearing. Motion granted. Court to issue opinion explaining ruling.) (Edmond, Michael)
10/26/2022	<u>3587</u> Notice of Service of Trial Subpoena on Tim Cournoyer filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
10/26/2022	<u>3588</u> Notice of Service of Trial Subpoena on David Klos filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
10/26/2022	<u>3592</u> Request for transcript regarding a hearing held on 10/26/2022. The requested turn-around time is hourly. (Edmond, Michael) (Entered: 10/28/2022)
10/27/2022	<u>3589</u> DISTRICT COURT NOTICE OF APPEAL as to 49 Memorandum Opinion and Order to the Fifth Circuit by Jonathan Bridges, CLO Holdco Ltd, Mark Patrick, Mazin A Sbaiti, Sbaiti & Company PLLC, The Charitable DAF Fund LP. (RE: related document(s) <u>2762</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01974-X. (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Whitaker, Sheniqua) MODIFIED text on 8/24/2021.)USCA Case Number 22-11036 (Whitaker, Sheniqua)
10/27/2022	<u>3590</u> Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73 # <u>74</u> Exhibit 74 # <u>75</u> Exhibit 75 # <u>76</u> Exhibit 76 # <u>77</u> Exhibit 77 # <u>78</u> Exhibit 78 # <u>79</u> Exhibit 79 # <u>80</u> Exhibit 80 # <u>81</u> Exhibit 81 # <u>82</u> Exhibit 82 # <u>83</u> Exhibit 83 # <u>84</u> Exhibit 84 # <u>85</u> Exhibit 85 # <u>86</u> Exhibit 86 # <u>87</u> Exhibit 87 # <u>88</u> Exhibit 88 # <u>89</u> Exhibit 89 # <u>90</u> Exhibit 90 # <u>91</u> Exhibit 91 # <u>92</u> Exhibit 92 # <u>93</u> Exhibit 93 # <u>94</u> Exhibit 94 # <u>95</u> Exhibit 95 # <u>96</u> Exhibit 96 # <u>97</u> Exhibit 97 # <u>98</u> Exhibit 98 # <u>99</u> Exhibit 99 # <u>100</u> Exhibit 100 # <u>101</u> Exhibit 101 # <u>102</u> Exhibit 102) (Annable, Zachery)
10/27/2022	<u>3591</u> Witness and Exhibit List ( <i>NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC Witness and Exhibit List with respect to Evidentiary Hearing to be Held on November 1 and 2, 2022</i> ) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>906</u> Objection to claim, <u>1212</u> Response to objection to claim). (Gameros, Charles)
10/29/2022	

	<u>3593</u> Objection to (related document(s): <u>3590</u> List (witness/exhibit/generic) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
10/31/2022	<u>3595</u> Response opposed to (related document(s): <u>3541</u> Motion to recuse Judge Stacey G. C. Jernigan filed by Interested Party James Dondero, <u>3570</u> Motion to recuse Judge Stacey G. C. Jernigan – AMENDED filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/31/2022	<u>3596</u> Support/supplemental document ( <i>Appendix in Support of Highland's Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. 455 and Brief in Support</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3595</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36) (Annable, Zachery)
10/31/2022	<u>3597</u> Amended Witness and Exhibit List ( <i>Reorganized Debtor's Amended Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3590</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 103) (Annable, Zachery)
10/31/2022	<u>3598</u> Certificate of service re: Reorganized Debtors Witness and Exhibit List with Respect to Trial to be Held on November 1, 202 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3590</u> Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73 # 74 Exhibit 74 # 75 Exhibit 75 # 76 Exhibit 76 # 77 Exhibit 77 # 78 Exhibit 78 # 79 Exhibit 79 # 80 Exhibit 80 # 81 Exhibit 81 # 82 Exhibit 82 # 83 Exhibit 83 # 84 Exhibit 84 # 85 Exhibit 85 # 86 Exhibit 86 # 87 Exhibit 87 # 88 Exhibit 88 # 89 Exhibit 89 # 90 Exhibit 90 # 91 Exhibit 91 # 92 Exhibit 92 # 93 Exhibit 93 # 94 Exhibit 94 # 95 Exhibit 95 # 96 Exhibit 96 # 97 Exhibit 97 # 98 Exhibit 98 # 99 Exhibit 99 # 100 Exhibit 100 # 101 Exhibit 101 # 102 Exhibit 102) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/31/2022	<u>3599</u> Amended Witness and Exhibit List ( <i>NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC Witness and Exhibit List with respect to Evidentiary Hearing to be Held on November 1 and 2, 2022</i> ) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>3591</u> List (witness/exhibit/generic)). (Gameros, Charles)
10/31/2022	<u>3600</u> Certificate of service re: 1) Highlands Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support ; 2) Appendix in Support of Highlands Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support ;

	<p>and 3) Reorganized Debtors Amended Witness and Exhibit List with Respect to Trial to be Held on November 1, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3595</u> Response opposed to (related document(s): <u>3541</u> Motion to recuse Judge Stacey G. C. Jernigan filed by Interested Party James Dondero, <u>3570</u> Motion to recuse Judge Stacey G. C. Jernigan – AMENDED filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3596</u> Support/supplemental document (<i>Appendix in Support of Highland's Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. 455 and Brief in Support</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3595</u> Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36) filed by Debtor Highland Capital Management, L.P., <u>3597</u> Amended Witness and Exhibit List (<i>Reorganized Debtor's Amended Witness and Exhibit List with Respect to Trial to Be Held on November 1, 2022</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>3590</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 103) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/01/2022	<p><u>3601</u> Transcript regarding Hearing Held 10/26/2022 (50 Pages) RE: AMENDED TRANSCRIPT Re: Motion to Conform Plan (#3503) (Replaces ECF #3594). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/30/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3586 Hearing held on 10/26/2022. (RE: related document(s)<u>3503</u> Motion for leave, (Motion to Conform Plan) (related document(s) <u>1943</u> Order confirming chapter 11 plan) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Reorganized Debtor; L. Hogewood for 5 Funds; J. Ong for NexPoint Advisors and HCMFA; D. Draper for Dugaboy. Nonevidentiary hearing. Motion granted. Court to issue opinion explaining ruling.)). Transcript to be made available to the public on 01/30/2023. (Rehling, Kathy)</p>
11/01/2022	<p><u>3602</u> Objection to (related document(s): <u>3520</u> Motion to quash (<i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i>) filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)</p>
11/01/2022	<p><u>3603</u> INCORRECT EVENT: attorney to refile. Motion for valuation <i>Reply in Support of Its Motion for Determination of Value</i> Filed by Creditor The Dugaboy Investment Trust (Draper, Douglas) Modified on 11/2/2022 (Ecker, C.).</p>
11/01/2022	<p>3604 Hearing held on 11/1/2022. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger</p>

	<p>Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris and H. Winograd for Reorganized Debtor; C. Gamores and W. Carvell for Claimant, HCRE. Evidentiary hearing. Matter taken under advisement.) (Edmond, Michael)</p>
11/01/2022	<p><u>3605</u> Objection to (related document(s): <u>3520</u> Motion to quash (<i>The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order</i>) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Hunter Mountain Investment Trust. (Phillips, Louis)</p>
11/01/2022	<p><u>3606</u> Reply to (related document(s): <u>3465</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor Hunter Mountain Investment Trust. (Phillips, Louis)</p>
11/01/2022	<p><u>3611</u> Court admitted exhibits date of hearing November 1, 2022 (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moody's Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor</p>

	Highland Capital Management, L.P., (COURT ADMITTED EXHIBITS OF HCRE'S CLAIM; EXHIBITS #1 THROUGH #6 & #17 THROUGH #20; ADMITTED BY DOUGLAS WADE CARVELL AND CHARLES W. GAMEROS; AND COURT ADMITTED EXHIBITS OF THE DEBTOR HIGHGLAND CAPITAL MGM., L.P., EXHIBITS #1 THROUGH #65, #71, #71, 73, #74 & #75 THROUGH #96 WITH THE EXCEPTION OF #93; EXHIBIT #103 OFFERED BY JOHN MORRIS). (Edmond, Michael) (Entered: 11/07/2022)
11/02/2022	<u>3607</u> Reply to (related document(s): <u>3465</u> Response filed by Debtor Highland Capital Management, L.P.) <i>Reply in support of its Motion for Determination of Value</i> filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
11/03/2022	<u>3609</u> Request for transcript regarding a hearing held on 11/1/2022. The requested turn-around time is 3-day expedited (Jeng, Hawaii)
11/07/2022	<u>3612</u> PDF with attached Audio File. Court Date & Time [11/01/2022 08:43:54 AM]. File Size [ 141382 KB ]. Run Time [ 10:06:02 ]. (admin).
11/07/2022	<u>3613</u> PDF with attached Audio File. Court Date & Time [11/01/2022 08:43:54 AM]. File Size [ 141382 KB ]. Run Time [ 10:06:02 ]. (admin).
11/08/2022	<u>3614</u> Reply to (related document(s): <u>3467</u> Response filed by Creditor Hunter Mountain Investment Trust, <u>3606</u> Reply filed by Creditor Hunter Mountain Investment Trust, <u>3607</u> Reply filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/08/2022	<u>3615</u> Reply to (related document(s): <u>3602</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>3605</u> Objection filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/08/2022	<u>3616</u> Transcript regarding Hearing Held 11/01/22 RE: Debtor's objection to HCRE's proof of claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/6/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Susan Palmer, Palmer Reporting Services, Telephone number palmerrptg@aol.com, (209) 915-3065. (RE: related document(s) 3604 Hearing held on 11/1/2022. (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point

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	Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris and H. Winograd for Reorganized Debtor; C. Gamores and W. Carvell for Claimant, HCRE. Evidentiary hearing. Matter taken under advisement.)). Transcript to be made available to the public on 02/6/2023. (Palmer, Susan)
11/09/2022	<u>3617</u> Certificate of service re: 1) Reply in Further Opposition to Valuation Motion; and 2) The Highland Parties Reply in Further Support of Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3614</u> Reply to (related document(s): <u>3467</u> Response filed by Creditor Hunter Mountain Investment Trust, <u>3606</u> Reply filed by Creditor Hunter Mountain Investment Trust, <u>3607</u> Reply filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3615</u> Reply to (related document(s): <u>3602</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>3605</u> Objection filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/10/2022	<u>3618</u> Motion for leave to <i>File a Reply Brief in Excess of Page Limit</i> Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order Order Granting Unopposed Motion for Leave to File Reply Brief in Excess of Page Limit) (Lang, Michael)
11/10/2022	<u>3619</u> Motion for leave ( <i>Highland Capital Management, L.P.'s Motion for Leave to File Post-Trial Brief and for Related Relief</i> ) (related document(s) 3604 Hearing held) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Post-Trial Brief) (Annable, Zachery)
11/11/2022	<u>3620</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3474</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2022	<u>3621</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3620</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3474</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/8/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3620</u> , (Annable, Zachery)
11/11/2022	<u>3622</u> Certificate of service re: Highland Capital Management, L.P.s Motion for Leave to File Post-Trial Brief and for Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3619</u> Motion for leave ( <i>Highland Capital Management, L.P.'s Motion for Leave to File Post-Trial Brief and for Related Relief</i> ) (related document(s) 3604 Hearing held) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Post-Trial Brief) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/15/2022	<u>3624</u> Request for transcript regarding a hearing held on 11/15/2022. The requested turn-around time is hourly. (Edmond, Michael)
11/15/2022	

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	<p>3625 Hearing held on 11/15/2022. (RE: related document(s)<u>3382</u> Motion for valuation; Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust, filed by Creditor The Dugaboy Investment Trust; (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20–page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the valuation motion. Court will rule on the pleadings by mid–December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid–December to set valuation motion and motion to quash for hearing in mid–January.) (Edmond, Michael)</p>
11/15/2022	<p>3626 Hearing held on 11/15/2022. (RE: related document(s)<u>3520</u> Motion to quash (The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order), filed by Debtor Highland Capital Management, L.P.) (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20–page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the related valuation motion. Court will rule on the pleadings by mid–December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid–December to set valuation motion and motion to quash for hearing in mid–January.) (Edmond, Michael)</p>
11/16/2022	<p><u>3627</u> Transcript regarding Hearing Held 11/15/2022 (31 pages) RE: Status Conferences Re: Valuation Motion (#3382) and Motion to Quash (#3520). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/14/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) 3625 Hearing held on 11/15/2022. (RE: related document(s)<u>3382</u> Motion for valuation; Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust, filed by Creditor The Dugaboy Investment Trust; (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20–page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the valuation motion. Court will rule on the pleadings by mid–December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid–December to set valuation motion and motion to quash for hearing in mid–January.), 3626 Hearing held on 11/15/2022. (RE: related document(s)<u>3520</u> Motion to quash (The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order), filed by Debtor Highland Capital Management, L.P.) (Appearances: D. Draper for Movant; L. Phillips for Hunter Mountain; J. Pomeranz and J. Morris for Reorganized Debtor. Nonevidentiary status conference. Court expressed concerns whether the valuation request requires an adversary proceeding. Parties have through 11:59 pm on 11/29/22 to submit one 20–page (maximum) brief solely dealing with the issue of whether an adversary proceeding is required for the related valuation motion. Court will rule on the pleadings by mid–December. If court determines that no adversary proceeding is required, courtroom deputy will reach out to lawyers in mid–December to set valuation motion and motion to quash for hearing in mid–January.)). Transcript to be made available to the public on 02/14/2023. (Rehling, Kathy)</p>
11/16/2022	<p><u>3628</u> Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure ; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson</p>

	<p>Consultants LLC (related document(s)<a href="#">3620</a> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<a href="#">3474</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <a href="#">3621</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">3620</a> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<a href="#">3474</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/8/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3620</a>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/17/2022	<p><a href="#">3629</a> WITHDRAWN at docket <a href="#">3840</a>. Motion to redact/restrict Redact (related document(s):<a href="#">3623</a>) (Fee Amount \$26) filed by Interested Party James Dondero (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Proposed Order) (Lang, Michael) Modified on 6/13/2023 (Ecker, C.).</p>
11/17/2022	<p><a href="#">3630</a> INCORRECT EVENT: Attorney to refile. Motion for leave to <i>File Reply in Support of Amended Renewed Motion to Recuse Under Seal</i> Filed by Interested Party James Dondero (Attachments: # <a href="#">1</a> Proposed Order) (Lang, Michael) Modified on 11/18/2022 (Ecker, C.).</p>
11/18/2022	<p><a href="#">3631</a> Clerk's correspondence requesting please refile using the ECF event: Motion "Motion to Seal" from attorney for interested party. (RE: related document(s)<a href="#">3630</a> INCORRECT EVENT: Attorney to refile. Motion for leave to <i>File Reply in Support of Amended Renewed Motion to Recuse Under Seal</i> Filed by Interested Party James Dondero (Attachments: # <a href="#">1</a> Proposed Order) (Lang, Michael) Modified on 11/18/2022 (Ecker, C.)) Responses due by 11/25/2022. (Ecker, C.)</p>
11/18/2022	<p><a href="#">3632</a> WITHDRAWN at #<a href="#">3840</a> Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # <a href="#">1</a> Proposed Order) (Lang, Michael) Modified on 6/13/2023 (Ecker, C.).</p>
11/18/2022	<p>Receipt of filing fee for Motion to Redact/Restrict From Public View(<a href="#">19-34054-sgj11</a>) [motion,mredact] ( 26.00). Receipt number A29973922, amount \$ 26.00 (re: Doc# <a href="#">3629</a>). (U.S. Treasury)</p>
11/22/2022	<p><a href="#">3633</a> Order granting Interested Party James Dondero's unopposed motion for leave to file reply brief in excess of page limit (related document # <a href="#">3618</a>) Entered on 11/22/2022. (Okafor, Marcey)</p>
11/22/2022	<p><a href="#">3634</a> Order granting Highland Capital Management, L.P.'s Motion for Leave to File Post-Trial Brief and for Related Relief (related document # <a href="#">3619</a>) Entered on 11/22/2022. (Okafor, Marcey)</p>
11/22/2022	<p><a href="#">3635</a> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">906</a> Objection to claim). (Annable, Zachery)</p>
11/23/2022	<p><a href="#">3636</a> Certificate of service re: 1) Order Granting Highland Capital Management, L.P.s Motion for Leave to File Post-Trial Brief and for Related Relief; and 2) Highland Capital Management, L.P.s Post-Trial Brief Addressing HCREs Executory Contract Defense Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">3634</a> Order granting Highland Capital Management, L.P.'s Motion for Leave to File Post-Trial Brief and for Related Relief (related document <a href="#">3619</a>) Entered on 11/22/2022., <a href="#">3635</a> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">906</a> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/29/2022	<p><a href="#">3637</a> Brief in support filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<a href="#">3382</a> Motion for valuation<i>Motion for Determination of the Value of the Estate</i></p>

	<i>and Assets Held by the Claimant Trust</i> ). (Draper, Douglas)
11/29/2022	<u>3638</u> Brief in support filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> ). (Phillips, Louis)
11/29/2022	<u>3639</u> Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> , <u>3533</u> Supplemental Motion for valuation <i>Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> ). (Annable, Zachery)
12/01/2022	<u>3640</u> Certificate of service re: Highland Capital Management, L.P.'s Brief Establishing the Need for an Adversary Proceeding to Obtain the Relief Sought in Valuation Motion Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3639</u> Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3382</u> Motion for valuation <i>Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> , <u>3533</u> Supplemental Motion for valuation <i>Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/02/2022	<u>3641</u> Response opposed to (related document(s): <u>3635</u> Brief filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
12/05/2022	<u>3642</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3620</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3474</u> Order on motion to extend/shorten time)). (Annable, Zachery)
12/06/2022	<u>3643</u> Order further extending period within which the Reorganized Debtor may remove actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure # <u>3620</u> Motion to extend time. Entered on 12/6/2022. (Okafor, Marcey)
12/07/2022	<u>3644</u> Reply to (related document(s): <u>3641</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/07/2022	<u>3645</u> Order denying motion for determination of the value of the estate and assets held by the claimant trust (related document # <u>3382</u> ), denying supplemental and amended motion for determination of the value of the estate and assets held by claimant trust (related document # <u>3533</u> ) Entered on 12/7/2022. (Okafor, Marcey)
12/07/2022	<u>3646</u> Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>3643</u> Order further extending period within which the Reorganized Debtor may remove actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure <u>3620</u> Motion to extend time. Entered on 12/6/2022.). (Kass, Albert)
12/08/2022	<u>3647</u> Certificate of service re: Highland Capital Management, L.P.'s Reply to HCREs Post-Trial Brief [Docket No. 3641] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3644</u> Reply to (related document(s): <u>3641</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/15/2022	<u>3648</u> Reply to (related document(s): <u>3595</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Lang, Michael)
01/04/2023	<u>3649</u> Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s) <u>3629</u> Motion to redact/restrict Redact (related document(s): <u>3623</u> ) (Fee Amount \$26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 1/11/2023. (Ecker, C.)
01/04/2023	<u>3650</u> Clerk's correspondence requesting an order from attorney for interested party. (RE: related document(s) <u>3632</u> Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)) Responses due by 1/11/2023. (Ecker, C.)
01/13/2023	<u>3651</u> Notice of firm name change from Ross & Smith, PC to Ross, Smith & Binford, PC. (Smith, Frances)
01/23/2023	<u>3652</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/2022 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
01/23/2023	<u>3653</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/2022 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
01/31/2023	<u>3654</u> Clerk's correspondence <b>**Second Request**</b> requesting an order from attorney for interested party. (RE: related document(s) <u>3629</u> Motion to redact/restrict Redact (related document(s): <u>3623</u> ) (Fee Amount \$26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 2/14/2023. (Ecker, C.)
01/31/2023	<u>3655</u> Clerk's correspondence <b>**Second Request**</b> requesting an order from attorney for interested party. (RE: related document(s) <u>3632</u> Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)) Responses due by 2/14/2023. (Ecker, C.)
02/01/2023	<u>3656</u> Order denying as moot The Highland Parties' motion to quash subpoena served by The Dugaboy Investment Trust or for a protective order (related document # <u>3520</u> ) Entered on 2/1/2023. (Okafor, Marcey)
02/02/2023	<u>3657</u> Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
02/02/2023	<u>3658</u> DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 47 Notice of Appeal filed by The Dugaboy Investment Trust, NexPoint Advisors LP, Highland Capital Management Fund Advisors LP. We DISMISS IN PART the appeal and AFFIRM the district courts judgment. re: appeal on appellate case number: 22-10189, DISMISSED IN PART and the judgment of the district court is AFFIRMED (RE: related document(s) <u>2673</u> Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust). Civil case 3:21-cv-01895-D. Entered on 2/2/2023 (Whitaker, Sheniqua)
02/02/2023	<u>3659</u> DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22-10189, AFFIRMED IN PART AND DISMISSED IN PART (RE: related document(s) <u>2673</u> Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust). Civil case 3:21-cv-01895-D Entered on 2/2/2023 (Whitaker, Sheniqua)

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02/06/2023	<u>3662</u> Motion for leave to <i>File Proceeding</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # <u>1</u> Exhibit Exhibit A) (Deutsch-Perez, Deborah)
02/07/2023	<u>3663</u> Certificate of service re: Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3657</u> Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/10/2023	<u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/10/2023	<u>3665</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3664</u> , (Annable, Zachery)
02/13/2023	<u>3666</u> Notice of hearing filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s) <u>3662</u> Motion for leave to <i>File Proceeding</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # 1 Exhibit Exhibit A)). Hearing to be held on 4/24/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3662</u> , (Deutsch-Perez, Deborah)
02/14/2023	<u>3667</u> Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3665</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3664</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/16/2023	<u>3668</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order)). Hearing to be held on 3/29/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3657</u> , (Annable, Zachery)
02/22/2023	<u>3669</u> Certificate of service re: Notice of Hearing re: Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3668</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim(s) of Creditor(s) Highland CLO Management, Ltd... Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Proposed Order)). Hearing to be held on 3/29/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3657</u> , filed

	by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/22/2023	<u>3670</u> Certificate of service re: (Amended) re 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3665</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3664</u> , filed by Debtor Highland Capital Management, L.P., <u>3667</u> Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3665</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 3/7/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3664</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/27/2023	<u>3671</u> Memorandum of Opinion and Order on Reorganized Debtor's Motion to Conform Plan (RE: related document(s) <u>3503</u> Motion for leave filed by Debtor Highland Capital Management, L.P.). Entered on 2/27/2023 (Okafor, Marcey)
02/27/2023	<u>3672</u> Order Granting Motion to Conform Plan and Orders that one change be made to the Plan to conform it to the mandate of the Fifth Circuit: revise the definition of Exculpated Parties as proposed in the Motion and no more. (related document # <u>3503</u> ) Entered on 2/27/2023. (Okafor, Marcey)
03/03/2023	<u>3673</u> Brief in support filed by Interested Party James Dondero (RE: related document(s) <u>3570</u> Motion to recuse Judge Stacey G. C. Jernigan – AMENDED). (Lang, Michael)
03/04/2023	<u>3674</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3664</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3643</u> Order on motion to extend/shorten time)). (Annable, Zachery)
03/06/2023	<u>3675</u> Memorandum of Opinion and Order Denying Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. Section 455 (RE: related document(s) <u>3570</u> Motion to recuse Judge filed by Interested Party James Dondero). Entered on 3/6/2023 (Okafor, Marcey)
03/06/2023	

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	<u>3676</u> Order Denying Amended Renewed Motion to Recuse Pursuant to U.S.C. Section 455 (related document # <u>3570</u> ) Entered on 3/6/2023. (Okafor, Marcey)
03/06/2023	Adversary case 3:22-ap-3052 closed Pursuant to LBR 9070-1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60-day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60-day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
03/07/2023	<u>3677</u> Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. # <u>3664</u> Motion to extend time.) Entered on 3/7/2023. (Okafor, Marcey)
03/08/2023	<u>3678</u> Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3677</u> Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. # <u>3664</u> Motion to extend time.) Entered on 3/7/2023.). (Kass, Albert)
03/10/2023	Adversary case 3:21-ap-3020 closed Pursuant to LBR 9070-1, any exhibits that were admitted by the Court may be claimed and removed from the Clerks Office during the 60-day period following final disposition of a case by the attorney or party who introduced the exhibits. Any exhibit not removed within the 60-day period may be destroyed or otherwise disposed of by the Bankruptcy Clerk. (Ecker, C.)
03/10/2023	<u>3679</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Hunter Mountain Investment Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3662</u> Motion for leave to <i>File Proceeding</i> ). (Aigen, Michael)
03/10/2023	<u>3680</u> Notice of Appearance and Request for Notice by John Kendrick Turner filed by Creditor Dallas County COLEMAN COUNTY TAD KAUFMAN COUNTY UPSHUR COUNTY FANNIN CAD ROCKWALL CAD TARRANT COUNTY ALLEN ISD CITY OF ALLEN CITY OF RICHARDSON IRVING ISD GRAYSON COUNTY. (Turner, John) Modified on 3/14/2023 (Ecker, C.).
03/10/2023	<u>3681</u> Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim). (Annable, Zachery)
03/13/2023	<u>3682</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3671</u> Memorandum of opinion, <u>3672</u> Order on motion for leave). Appellant Designation due by 03/27/2023. (Attachments: # <u>1</u> Exhibit A)(Rukavina, Davor)
03/13/2023	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A30244459, amount \$ 298.00 (re: Doc# <u>3682</u> ). (U.S. Treasury)
03/14/2023	<u>3683</u> Certificate of service re: Stipulation Extending Deadlines Related to Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>3681</u> Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

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03/15/2023	<u>3685</u> Notice of docketing notice of appeal. Civil Action Number: 3:23-cv-00573-E. (RE: related document(s) <u>3682</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3671</u> Memorandum of opinion, <u>3672</u> Order on motion for leave). Appellant Designation due by 03/27/2023. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/21/2023	<u>3686</u> Order approving stipulation extending deadlines related to Highland Capital Management L.P.'s objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, Ltd. (RE: related document(s) <u>3681</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023 (Okafor, Marcey)
03/21/2023	<u>3687</u> Order approving stipulation to extend Reorganized Debtor's response date and Movants' reply date with respect to motion for leave to file proceeding (RE: related document(s) <u>3679</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023 (Okafor, Marcey)
03/22/2023	<u>3688</u> Motion for Certification to Court of Appeals ( <i>Joint Motion</i> ) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Berghman, Thomas)
03/22/2023	<u>3689</u> Certificate of service re: re 1) Order Approving Stipulation Extending Deadlines Related to Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.; and 2) Order Approving Stipulation to Extend Reorganized Debtor's Response Date and Movants' Reply Date with Respect to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3686</u> Order approving stipulation extending deadlines related to Highland Capital Management L.P.'s objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, Ltd. (RE: related document(s) <u>3681</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023, <u>3687</u> Order approving stipulation to extend Reorganized Debtor's response date and Movants' reply date with respect to motion for leave to file proceeding (RE: related document(s) <u>3679</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/21/2023). (Kass, Albert)
03/22/2023	<u>3723</u> DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 22 Notice of Appeal filed by The Dugaboy Investment Trust.t re: appeal on appellate case number: 22-10831, AFFIRMED (RE: related document(s) <u>2840</u> Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil case 3:21-cv-02268-S Entered on 3/22/2023 (Whitaker, Sheniqua) (Entered: 04/06/2023)
03/22/2023	<u>3724</u> DISTRICT COURT JUDGMENT from circuit court re: appeal on appellate case number: 22-10831, AFFIRMED (RE: related document(s) <u>2840</u> Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil case 3:21-cv-02268-S Entered on 3/22/2023 (Whitaker, Sheniqua) (Entered: 04/06/2023)
03/23/2023	<u>3690</u> Certificate of service re: re Joint Motion for Certification of Direct Appeal to the Fifth Circuit of Order on Reorganized Debtors Motion to Conform Plan Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3688</u> Motion for Certification to Court of Appeals ( <i>Joint Motion</i> ) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). (Kass, Albert)
03/25/2023	<u>3691</u> INCORRECT EVENT: Attorney to refile. Support/supplemental document <i>ACIS CAPITAL MANAGEMENT, L.P.'S MOTION TO INTERVENE AND BRIEF IN SUPPORT</i> filed by Creditor Acis Capital Management, L.P. (RE: related document(s) <u>247</u> Schedules). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Bates, Shawn) Modified on 3/27/2023 (Ecker, C.).

03/27/2023	<u>3692</u> Response opposed to (related document(s): <u>3662</u> Motion for leave to <i>File Proceeding</i> filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
03/27/2023	<u>3693</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3682</u> Notice of appeal, <u>3685</u> Notice of docketing notice of appeal/record). (Berghman, Thomas)
03/27/2023	<u>3694</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3682</u> Notice of appeal, <u>3685</u> Notice of docketing notice of appeal/record, <u>3693</u> Statement of issues on appeal). Appellee designation due by 04/10/2023. (Berghman, Thomas)
03/27/2023	<u>3695</u> Motion to intervene <i>and Brief in Support</i> filed by Creditor Acis Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Bates, Shawn)
03/28/2023	<u>3696</u> Order of certification of direct appeal to the circuit court (RE: related document(s) <u>3682</u> Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P. and <u>3688</u> Motion for Certification to Court of Appeals ( <i>Joint Motion</i> )) <i>Entered on 3/28/2023 (Okafor, Marcey). MODIFIED linkage on 3/28/2023 (Okafor, Marcey).</i>
03/28/2023	<u>3697</u> Certificate of service re: Response to Motion for Leave to File Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3692</u> Response opposed to (related document(s): <u>3662</u> Motion for leave to <i>File Proceeding</i> filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/28/2023	<u>3698</u> Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s) <u>3694</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3682</u> Notice of appeal, <u>3685</u> Notice of docketing notice of appeal/record, <u>3693</u> Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)
03/28/2023	<u>3699</u> Motion for leave to <i>File Verified Adversary Proceeding</i> Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # <u>1</u> Exhibit Exhibit 1 # <u>2</u> Exhibit Exhibit 2 # <u>3</u> Exhibit Exhibit 3 # <u>4</u> Exhibit Exhibit 4 # <u>5</u> Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	<u>3700</u> Motion for expedited hearing(related documents <u>3699</u> Motion for leave) Filed by Creditor Hunter Mountain Investment Trust (Attachments: # <u>1</u> Proposed Order Proposed Order) (McEntire, Sawnie)
03/28/2023	<u>3701</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3694</u> Appellant designation). (Berghman, Thomas)
03/29/2023	<u>3702</u> INCORRECT ENTY; Notice of Motion to Stay and Response Plaintiff's Motion to Stay filed by Interested Party James Dondero, Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Chambers, Deanna).
03/29/2023	<u>3703</u> INCORRECT ENTRY. Filed in error. Motion for expedited hearing(related documents <u>3702</u> Notice (generic)) <i>The Dondero Defendants' Motion to Stay and Response to Plaintiff's Motion to Stay</i> Filed by Interested Party James Dondero, Get Good Trust, The

	Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Hopkins, Jason) Modified on 3/30/2023 (Spelmon, T).
03/30/2023	<u>3704</u> Objection to (related document(s): <u>3700</u> Motion for expedited hearing(related documents <u>3699</u> Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Farallon Capital Management, LLC, Stonehill Capital Management LLC, Jessup Holdings LLC, Muck Holdings LLC. (Bailey, Christopher)
03/30/2023	<u>3705</u> Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3699</u> Motion for leave <i>to File Verified Adversary Proceeding</i> ). (McEntire, Sawnie)
03/30/2023	<u>3706</u> Certificate AMENDED CERTIFICATE OF CONFERENCE filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3704</u> Objection). (McEntire, Sawnie)
03/30/2023	<u>3707</u> Response opposed to (related document(s): <u>3700</u> Motion for expedited hearing(related documents <u>3699</u> Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2023	<u>3708</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3707</u> Response). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (Annable, Zachery)
03/30/2023	<u>3709</u> BNC certificate of mailing. (RE: related document(s) <u>3698</u> Clerk's correspondence requesting file an amended designation from attorney for appellant . (RE: related document(s) <u>3694</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>3682</u> Notice of appeal, <u>3685</u> Notice of docketing notice of appeal/record, <u>3693</u> Statement of issues on appeal). Appellee designation due by 04/10/2023.) Responses due by 3/31/2023. (Blanco, J.)) No. of Notices: 1. Notice Date 03/30/2023. (Admin.)
03/31/2023	<u>3712</u> Reply to (related document(s): <u>3704</u> Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC, <u>3707</u> Response filed by Debtor Highland Capital Management, L.P.) <i>and in Support of Application for Expedited Hearing</i> filed by Creditor Hunter Mountain Investment Trust. (McEntire, Sawnie)
03/31/2023	<u>3713</u> Order denying motion for expedited hearing (Related Doc# <u>3700</u> ) Entered on 3/31/2023. (Okafor, Marcey)
04/03/2023	<u>3714</u> INCORRECT ENTRY: REFILED WITH CORRECT LINKAGE AS DOC. 3715. Response opposed to (related document(s): <u>3704</u> Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC) filed by Interested Party Highland CLO Management Ltd. (Deitsch-Perez, Deborah) Modified on 4/4/2023 (Tello, Chris).
04/03/2023	<u>3715</u> Response opposed to (related document(s): <u>3657</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) <i>HCLOM Response to HCMLP Objection to Scheduled Claims 3.65 and 3.66</i> filed by Interested Party Highland CLO Management Ltd. (Deitsch-Perez, Deborah)
04/03/2023	<u>3716</u> Support/supplemental document <i>Appendix in Support of HCLOM Response to HCMLP Objection to Scheduled Claims 3.65 and 3.66</i> filed by Interested Party Highland

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	CLO Management Ltd (RE: related document(s) <u>3715</u> Response to objection to claim). (Attachments: # <u>1</u> Exhibit Exhibit 1 # <u>2</u> Exhibit Exhibit 2 # <u>3</u> Exhibit Exhibit 3 # <u>4</u> Exhibit Exhibit 4 # <u>5</u> Exhibit Exhibit 5 # <u>6</u> Exhibit Exhibit 6 # <u>7</u> Exhibit Exhibit 7 # <u>8</u> Exhibit Exhibit 8 # <u>9</u> Exhibit Exhibit 9 # <u>10</u> Exhibit Exhibit 10 # <u>11</u> Exhibit Exhibit 11 # <u>12</u> Exhibit Exhibit 12 # <u>13</u> Exhibit Exhibit 13 # <u>14</u> Exhibit Exhibit 14 # <u>15</u> Exhibit Exhibit 15 # <u>16</u> Exhibit Exhibit 16 # <u>17</u> Exhibit Exhibit 17 # <u>18</u> Exhibit Exhibit 18 # <u>19</u> Exhibit Exhibit 19) (Deutsch-Perez, Deborah)
04/03/2023	<u>3717</u> Response unopposed to (related document(s): <u>3657</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) <i>ACIS CAPITAL MANAGEMENT, L.P.S RESPONSE TO SCHEDULED CLAIMS 3.65 AND 3.66 OF HIGHLAND CLO MANAGEMENT, LTD. SUBJECT TO PENDING MOTION TO INTERVENE</i> filed by Creditor Acis Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit Ex. A # <u>2</u> Exhibit Ex. B # <u>3</u> Exhibit Ex. C # <u>4</u> Exhibit Ex. D # <u>5</u> Ex. E # <u>6</u> Exhibit Ex. G # <u>7</u> Exhibit Ex. H # <u>8</u> Exhibit Ex. I # <u>9</u> Exhibit Ex. J # <u>10</u> Exhibit Ex. L) (Cooke, Thomas)
04/04/2023	<u>3718</u> Motion for leave to appeal (related document(s): <u>3713</u> Order on motion for expedited hearing) Filed by Interested Party Hunter Mountain Trust Objections due by 4/7/2023. (Attachments: # <u>1</u> Exhibit Ex. 1 # <u>2</u> Exhibit Ex 2 # <u>3</u> Exhibit Ex 3 # <u>4</u> Proposed Order Prop Order) (McEntire, Sawnie)
04/04/2023	<u>3719</u> Motion for expedited hearing(related documents <u>3718</u> Motion for leave to appeal) Filed by Interested Party Hunter Mountain Trust (Attachments: # <u>1</u> Proposed Order Prop Order) (McEntire, Sawnie)
04/05/2023	<u>3720</u> Order denying Hunter Mountain Investment Trust's opposed motion for expedited hearing (Related Doc# <u>3719</u> ) Entered on 4/5/2023. (Okafor, Marcey)
04/05/2023	<u>3721</u> Notice of appeal . Fee Amount \$298 filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3713</u> Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # <u>1</u> Exhibit Order Denying Application for Expedited Hearing # <u>2</u> Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)(McEntire, Sawnie)
04/05/2023	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A30302491, amount \$ 298.00 (re: Doc# <u>3721</u> ). (U.S. Treasury)
04/05/2023	<u>3722</u> Motion to file document under seal. <i>ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE</i> Filed by Creditor Acis Capital Management, L.P. (Cooke, Thomas)
04/06/2023	<u>3726</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3721</u> Notice of appeal . filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3713</u> Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
04/06/2023	<u>3730</u> Certificate of service re: 1) The Highland Parties Objection to Hunter Mountain Investment Trusts Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding; and 2) Declaration of John A. Morris in Support of the Highland Parties Objection to Hunter Mountain Investment Trusts Opposed Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3707</u> Response opposed to (related document(s): <u>3700</u> Motion for expedited hearing(related documents <u>3699</u> Motion for leave) filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3708</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Highland Parties' Objection to Hunter Mountain Investment Trust's Opposed</i>

	<i>Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3707</u> Response). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2023	<u>3731</u> Notice of docketing transmittal of notice of appeal. Civil Action Number: 3:23-cv-00737-N. (RE: related document(s) <u>3721</u> Notice of appeal . filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3713</u> Order on motion for expedited hearing). Appellant Designation due by 04/19/2023. (Attachments: # 1 Exhibit Order Denying Application for Expedited Hearing # 2 Exhibit HMIT Emergency Motion for Leave to File Interlocutory Appeal)) (Whitaker, Sheniqua)
04/10/2023	<u>3732</u> Stipulation by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Highland CLO Management Ltd and Highland CLO Management, LTD.. filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Interested Party Highland CLO Management Ltd (RE: related document(s) <u>3717</u> Response to objection to claim). (Attachments: # <u>1</u> Proposed Order) (Aigen, Michael)
04/10/2023	<u>3733</u> Omnibus Reply to (related document(s): <u>3715</u> Response to objection to claim filed by Interested Party Highland CLO Management Ltd, <u>3717</u> Response to objection to claim filed by Creditor Acis Capital Management, L.P.) ( <i>Omnibus Reply in Further Support of Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/10/2023	<u>3734</u> INCORRECT ENTRY: Attorney to refile. Brief in support filed by Creditor Acis Capital Management, L.P. (RE: related document(s) <u>3722</u> Motion to file document under seal. <i>ACIS CAPITAL MANAGEMENT, L.P.'S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE</i> ). (Cooke, Thomas) Modified on 4/11/2023 (Ecker, C.).
04/11/2023	<u>3779</u> DISTRICT COURT Order denying motion for leave to appeal (related document # <u>3718</u> ) Entered on 4/11/2023. Civil Action No. 3:23-CV-737-N (Whitaker, Sheniqua) (Entered: 05/11/2023)
04/12/2023	<u>3735</u> Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim and <u>3695</u> Motion to intervene <i>and Brief in Support</i> filed by Creditor Acis Capital Management, L.P.). (Annable, Zachery). MODIFIED linkage on 4/12/2023 (Okafor, Marcey).
04/13/2023	<u>3736</u> Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s) <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023 (Okafor, Marcey)
04/13/2023	<u>3737</u> Certificate of service re: Omnibus Reply in Further Support of Highland Capital Management. L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3733</u> Omnibus Reply to (related document(s): <u>3715</u> Response to objection to claim filed by Interested Party Highland CLO Management Ltd, <u>3717</u> Response to objection to claim filed by Creditor Acis Capital Management, L.P.) ( <i>Omnibus Reply in Further Support of Highland Capital Management, L.P.'s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd.</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/13/2023	<u>3738</u> Motion to set hearing(related documents <u>3699</u> Motion for leave) ( <i>Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date</i>

	<i>with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
04/13/2023	<u>3739</u> Motion for expedited hearing(related documents <u>3738</u> Motion to set hearing) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/13/2023	<u>3740</u> Joinder by Joinder to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date With Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s) <u>3738</u> Motion to set hearing(related documents <u>3699</u> Motion for leave) ( <i>Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leav, <u>3739</u> Motion for expedited hearing(related documents <u>3738</u> Motion to set hearing)</i> ). (Bailey, Christopher)
04/13/2023	<u>3741</u> Notice of hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3699</u> Motion for leave to <i>File Verified Adversary Proceeding</i> Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). Hearing to be held on 4/24/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>3699</u> , (McEntire, Sawnie)
04/13/2023	<u>3742</u> Amended Notice of hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3699</u> Motion for leave to <i>File Verified Adversary Proceeding</i> Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). Hearing to be held on 4/24/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>3699</u> , (McEntire, Sawnie)
04/13/2023	<u>3743</u> Motion to appear pro hac vice for Mark T. Stancil. Fee Amount \$100 Filed by Creditor James P. Seery Jr. (Robin, Lindsey)
04/13/2023	<u>3744</u> Motion to appear pro hac vice for Joshua S. Levy. Fee Amount \$100 Filed by Other Professional James P. Seery Jr. (Robin, Lindsey)
04/13/2023	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A30323645, amount \$ 100.00 (re: Doc# <u>3743</u> ). (U.S. Treasury)
04/13/2023	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A30323645, amount \$ 100.00 (re: Doc# <u>3744</u> ). (U.S. Treasury)
04/13/2023	<u>3745</u> Notice of Appearance and Request for Notice by Omar Jesus Alaniz filed by Other Professional James P. Seery Jr.. (Alaniz, Omar)
04/14/2023	<u>3746</u> Brief in support filed by Creditor Acis Capital Management, L.P. (RE: related document(s) <u>3722</u> Motion to file document under seal. <i>ACIS CAPITAL MANAGEMENT, L.P.S MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS F AND K TO ITS RESPONSE</i> ). (Cooke, Thomas)
04/15/2023	<u>3747</u> Joinder by James P. Seery Jr. to Highland's Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding filed by Other Professional James P. Seery Jr. (RE: related document(s) <u>3738</u> Motion to set hearing(related documents <u>3699</u> Motion for leave) ( <i>Highland's Opposed Emergency Motion to Modify and</i>

	<i>Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave, <u>3739</u> Motion for expedited hearing(related documents <u>3738</u> Motion to set hearing) ). (Robin, Lindsey)</i>
04/17/2023	<u>3748</u> Response unopposed to (related document(s): <u>3738</u> Motion to set hearing(related documents <u>3699</u> Motion for leave) ( <i>Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
04/17/2023	<u>3749</u> Certificate of service re: re Stipulation Staying Contested Matter Concerning Highland Capital Management, L.P.s Objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. [DE # 3657] and Related Matters [DE # 3691] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3735</u> Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim and <u>3695</u> Motion to intervene <i>and Brief in Support</i> filed by Creditor Acis Capital Management, L.P.). (Annable, Zachery). MODIFIED linkage on 4/12/2023. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/17/2023	<u>3750</u> Certificate of service re: 1) Highlands Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding; and 2) Highlands Emergency Motion to Expedite Hearing on Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3738</u> Motion to set hearing(related documents <u>3699</u> Motion for leave) ( <i>Highland's Opposed Emergency Motion to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>3739</u> Motion for expedited hearing(related documents <u>3738</u> Motion to set hearing) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2023	<u>3751</u> Notice of Status Conference filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3699</u> Motion for leave <i>to File Verified Adversary Proceeding</i> Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). (McEntire, Sawnie)
04/20/2023	<u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Hopkins, Jason)
04/20/2023	<u>3753</u> Declaration re: <i>of Davor Rukavina in Support of The Dondero Defendants' Motion to Stay and to Compel Mediation</i> filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ). (Hopkins, Jason)
04/20/2023	<u>3754</u> Order granting motion to appear pro hac vice adding Mark Stancil for James P. Seery, Jr. (related document # <u>3743</u> ) Entered on 4/20/2023. (Rielly, Bill)
04/20/2023	<u>3755</u> Order granting motion to appear pro hac vice adding Joshua Seth Levy for James P. Seery, Jr. (related document # <u>3744</u> ) Entered on 4/20/2023. (Rielly, Bill)
04/21/2023	

	<u>3756</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 03/31/2023 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/21/2023	<u>3757</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 03/31/2023 filed by Other Professional Highland Claimant Trust. (Annable, Zachery)
04/21/2023	<u>3758</u> Brief in support filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3751</u> Notice (generic)). (McEntire, Sawnie)
04/21/2023	<u>3759</u> Notice of Rescheduling of Hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3699</u> Motion for leave to File Verified Adversary Proceeding Filed by Creditor Hunter Mountain Investment Trust Objections due by 3/31/2023. (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibit 2 # 3 Exhibit Exhibit 3 # 4 Exhibit Exhibit 4 # 5 Proposed Order Proposed Order)). (McEntire, Sawnie)
04/21/2023	<u>3761</u> Objection to (related document(s): <u>3751</u> Notice (generic) filed by Interested Party Hunter Mountain Trust) filed by Interested Party Hunter Mountain Trust . (Ecker, C.) (Entered: 04/24/2023)
04/23/2023	<u>3760</u> Support/supplemental document to <i>Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3699</u> Motion for leave to File Verified Adversary Proceeding). (Attachments: # <u>1</u> Exhibit Verified Adversary Complaint) (McEntire, Sawnie)
04/24/2023	<u>3762</u> Request for transcript regarding a hearing held on 4/24/2023. The requested turn-around time is hourly. (Edmond, Michael)
04/24/2023	<u>3763</u> Hearing held on 4/24/2023. (RE: related document(s) <u>3662</u> Motion for leave to File Proceeding, filed by Creditor The Dugaboy Investment Trust.) (Appearances: D. Deitsch-Perez for Movants; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion will either be withdrawn or resolved with an agreed order (Reorganized Debtor has provided documentation to Movants which was filed on docket 4/21/23; parties agree no leave of court is necessary for a declaratory judgment regarding valuation). (Edmond, Michael)
04/24/2023	<u>3764</u> Hearing held on 4/24/2023. (RE: related document(s) <u>3699</u> Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust.) (Appearances: S. McEntire and R. McClary for Movant; J. Morris for Reorganized Debtor; M. Stancil and O. Alaniz for J. Seery; B. McIlwaine for claims purchasers. Nonevidentiary status conference. Court announced scheduling order that contemplates a May 11 deadline for objections with briefs; a May 18 deadline for a reply with briefing; and a hearing June 8 at 9:30 am (court to notify parties shortly after May 18 whether evidence will be allowed). No other pleadings should be filed except witness and exhibit lists (3 days before hearing) if evidence is allowed. Parties should upload a scheduling order that reflects this.) (Edmond, Michael)
04/25/2023	<u>3765</u> Transcript regarding Hearing Held 04/24/2023 before Judge Stacey G.C. Jernigan (62 pages) RE: Dugaboy Investment Trust and Hunter Mountain Investment Trust's Motion for Leave to File Proceeding (3662) and Status Conference re: Motion for Leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust (3699). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/24/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>3763</u> Hearing held on 4/24/2023. (RE: related document(s) <u>3662</u> Motion for leave to File Proceeding, filed by Creditor The Dugaboy Investment Trust.) (Appearances: D. Deitsch-Perez for Movants; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion will either be withdrawn or resolved

	with an agreed order (Reorganized Debtor has provided documentation to Movants which was filed on docket 4/21/23; parties agree no leave of court is necessary for a declaratory judgment regarding valuation)., 3764 Hearing held on 4/24/2023. (RE: related document(s) <a href="#">3699</a> Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust.) (Appearances: S. McEntire and R. McClary for Movant; J. Morris for Reorganized Debtor; M. Stancil and O. Alaniz for J. Seery; B. McIlwaine for claims purchasers. Nonevidentiary status conference. Court announced scheduling order that contemplates a May 11 deadline for objections with briefs; a May 18 deadline for a reply with briefing; and a hearing June 8 at 9:30 am (court to notify parties shortly after May 18 whether evidence will be allowed). No other pleadings should be filed except witness and exhibit lists (3 days before hearing) if evidence is allowed. Parties should upload a scheduling order that reflects this.)). Transcript to be made available to the public on 07/24/2023. (Rehling, Kathy)
04/28/2023	<a href="#">3766</a> Memorandum of opinion regarding Debtor's objection to proof of claim #146 (RE: related document(s) <a href="#">906</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/28/2023 (Okafor, Marcey)
04/28/2023	<a href="#">3767</a> Order sustaining Debter's objection to, and disallowing, proof of claim number 146 (RE: related document(s) <a href="#">906</a> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/28/2023 (Okafor, Marcey)
05/02/2023	<a href="#">3769</a> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . Transmitted: Volume 1, Mini Record. Number of appellant volumes: 3 . Civil Case Number: 3:23-CV-00573E (RE: related document(s) <a href="#">3682</a> Notice of appeal (RE: related document(s) <a href="#">3671</a> Memorandum of opinion, <a href="#">3672</a> Order on motion for leave). (Blanco, J.)
05/02/2023	<a href="#">3770</a> Notice of docketing COMPLETE record on appeal. 3:23-cv-00573-E (RE: related document(s) <a href="#">3682</a> Notice of appeal < (RE: related document(s) <a href="#">3671</a> Memorandum of opinion, <a href="#">3672</a> Order on motion for leave).) (Blanco, J.)
05/04/2023	<a href="#">3771</a> Notice of Withdrawal of Motion for Leave to File Proceeding filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s) <a href="#">3662</a> Motion for leave to File Proceeding Filed by Creditor The Dugaboy Investment Trust Objections due by 2/27/2023. (Attachments: # 1 Exhibit Exhibit A)). (Deutsch-Perez, Deborah)
05/10/2023	<a href="#">3772</a> PDF with attached Audio File. Court Date & Time [04/24/2023 02:23:07 PM]. File Size [ 10249 KB ]. Run Time [ 01:32:41 ]. (admin).
05/10/2023	<a href="#">3773</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3677</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/10/2023	<a href="#">3774</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3773</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3677</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3773</a> , (Annable, Zachery)
05/10/2023	<a href="#">3775</a> Stipulation by Hunter Mountain Investment Trust, The Dugaboy Investment Trust and Highland Capital Management, L.P.. filed by Hunter Mountain Investment Trust, The Dugaboy Investment Trust (RE: related document(s) <a href="#">3662</a> Motion for leave to File Proceeding). (Attachments: # <a href="#">1</a> Proposed Order Granting Stipulation Withdrawing Movants' Motion for Leave to File Proceeding [Dkt. No. 3662]) (Aigen, Michael)

05/10/2023	<u>3776</u> Stipulation by James Dondero, Get Good Trust, Strand Advisors, Inc. and Highland Capital Management, L.P.. filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc. (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ). (Hopkins, Jason)
05/10/2023	<u>3777</u> Notice of hearing filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc. (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 6/26/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , (Attachments: # 1 Exhibit A) (Hopkins, Jason)
05/10/2023	<u>3778</u> Adversary case 23-03038. Complaint by Dugaboy Investment Trust, Hunter Mountain Investment Trust against Highland Capital Management, L.P. and Highland Claimant Trust. Fee Amount \$350. Nature(s) of suit: 91 (Declaratory judgment). (Deutsch-Perez, Deborah) Modified to add Defendant Highland Claimant Trust on 5/11/2023 (Okafor, Marcey).
05/11/2023	<u>3780</u> Objection to (related document(s): <u>3699</u> Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) <i>Objection to Hunter Mountain Investment Trusts (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding</i> filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC. (Bailey, Christopher)
05/11/2023	<u>3781</u> Order granting motion to set hearing (related document # <u>3738</u> ) Hearing to be held on 6/8/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3699</u> Emergency Motion for Leave to File Verified Adversary Proceeding and <u>3670</u> Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding. Entered on 5/11/2023. (Okafor, Marcey)
05/11/2023	<u>3782</u> Certificate of service re: 1) Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing re: Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3773</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3677</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>3774</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3773</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3677</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3773</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2023	<u>3783</u> Joint Response opposed to (related document(s): <u>3699</u> Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
05/11/2023	<u>3784</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding</i> ) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s) <u>3783</u> Response).

	(Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 (part 1) # <u>6</u> Exhibit 5 (part 2) # <u>7</u> Exhibit 6 # <u>8</u> Exhibit 7 # <u>9</u> Exhibit 8 # <u>10</u> Exhibit 9 # <u>11</u> Exhibit 10 # <u>12</u> Exhibit 11 # <u>13</u> Exhibit 12 # <u>14</u> Exhibit 13 # <u>15</u> Exhibit 14 # <u>16</u> Exhibit 15 # <u>17</u> Exhibit 16 # <u>18</u> Exhibit 17 # <u>19</u> Exhibit 18 # <u>20</u> Exhibit 19 # <u>21</u> Exhibit 20 # <u>22</u> Exhibit 21 # <u>23</u> Exhibit 22 # <u>24</u> Exhibit 23 # <u>25</u> Exhibit 24 # <u>26</u> Exhibit 25 # <u>27</u> Exhibit 26 # <u>28</u> Exhibit 27 # <u>29</u> Exhibit 28 # <u>30</u> Exhibit 29 # <u>31</u> Exhibit 30 # <u>32</u> Exhibit 31 # <u>33</u> Exhibit 31a # <u>34</u> Exhibit 32 # <u>35</u> Exhibit 33 # <u>36</u> Exhibit 34 # <u>37</u> Exhibit 35 # <u>38</u> Exhibit 36 # <u>39</u> Exhibit 37 # <u>40</u> Exhibit 38 # <u>41</u> Exhibit 39 # <u>42</u> Exhibit 40 # <u>43</u> Exhibit 41 # <u>44</u> Exhibit 42 # <u>45</u> Exhibit 43 # <u>46</u> Exhibit 44) (Annable, Zachery)
05/18/2023	<u>3785</u> Reply to (related document(s): <u>3780</u> Objection filed by Creditor Muck Holdings LLC, Creditor Jessup Holdings LLC, Creditor Stonehill Capital Management LLC, Creditor Farallon Capital Management, LLC, <u>3783</u> Response filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) <i>in Support of Emergency Motion for Leave to File Adversary Proceeding</i> filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
05/18/2023	<u>3829</u> DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court finds that the bankruptcy court did not abuse its discretion in denying CLO Holdco's amendment to its proof of claim. Accordingly, the bankruptcy court's denial of CLO Holdco's Motion to Ratify is AFFIRMED. The appeal is DISMISSED WITH PREJUDICE. (Ordered by Judge Jane J Boyle on 5/18/2023) re: appeal on Civil Action number: 3:22-cv-02051-B, AFFIRMED and DISMISSED with prejudice (RE: related document(s) <u>3457</u> Order on motion (generic)). Entered on 5/18/2023 (Whitaker, Sheniqua) (Entered: 06/08/2023)
05/22/2023	<u>3786</u> Certificate of service re: 1) Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Opposition to Hunter Mountain Investment Trusts Motion for Leave to File Verified Adversary Proceeding; and 2) Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Opposition to Hunter Mountain Investment Trusts Motion for Leave to File Verified Adversary Proceeding Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3783</u> Joint Response opposed to (related document(s): <u>3699</u> Motion for leave to <i>File Verified Adversary Proceeding</i> filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust, <u>3784</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding</i> ) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s) <u>3783</u> Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 (part 1) # 6 Exhibit 5 (part 2) # 7 Exhibit 6 # 8 Exhibit 7 # 9 Exhibit 8 # 10 Exhibit 9 # 11 Exhibit 10 # 12 Exhibit 11 # 13 Exhibit 12 # 14 Exhibit 13 # 15 Exhibit 14 # 16 Exhibit 15 # 17 Exhibit 16 # 18 Exhibit 17 # 19 Exhibit 18 # 20 Exhibit 19 # 21 Exhibit 20 # 22 Exhibit 21 # 23 Exhibit 22 # 24 Exhibit 23 # 25 Exhibit 24 # 26 Exhibit 25 # 27 Exhibit 26 # 28 Exhibit 27 # 29 Exhibit 28 # 30 Exhibit 29 # 31 Exhibit 30 # 32 Exhibit 31 # 33 Exhibit 31a # 34 Exhibit 32 # 35 Exhibit 33 # 36 Exhibit 34 # 37 Exhibit 35 # 38 Exhibit 36 # 39 Exhibit 37 # 40 Exhibit 38 # 41 Exhibit 39 # 42 Exhibit 40 # 43 Exhibit 41 # 44 Exhibit 42 # 45 Exhibit 43 # 46 Exhibit 44) filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)
05/22/2023	<u>3787</u> Order pertaining to the hearing on motion for leave to file adversary proceeding (RE: related document(s) <u>3699</u> Motion for leave filed by Creditor Hunter Mountain Investment Trust, <u>3760</u> Support/supplemental document filed by Interested Party Hunter Mountain Trust). Entered on 5/22/2023 (Rielly, Bill)
05/24/2023	<u>3788</u> Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit)

	(McEntire, Sawnie)
05/24/2023	<u>3789</u> Motion for expedited hearing(related documents <u>3788</u> Motion to extend/shorten time) Filed by Interested Party Hunter Mountain Trust (McEntire, Sawnie)
05/24/2023	<u>3790</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3787</u> Order pertaining to the hearing on motion for leave to file adversary proceeding (RE: related document(s) <u>3699</u> Motion for leave filed by Creditor Hunter Mountain Investment Trust, <u>3760</u> Support/supplemental document filed by Interested Party Hunter Mountain Trust). Entered on 5/22/2023) No. of Notices: 1. Notice Date 05/24/2023. (Admin.)
05/25/2023	<u>3791</u> Motion to continue hearing on (related documents <u>3760</u> Support/supplemental document) <i>in the Alternative</i> Filed by Interested Party Hunter Mountain Trust (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit) (McEntire, Sawnie)
05/25/2023	<u>3792</u> Order setting expedited hearing (RE: related document(s) <u>3788</u> Motion to extend/shorten time filed by Interested Party Hunter Mountain Trust, <u>3789</u> Motion for expedited hearing filed by Interested Party Hunter Mountain Trust, <u>3791</u> Motion to continue filed by Interested Party Hunter Mountain Trust). Hearing to be held on 5/26/2023 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3788</u> and for <u>3791</u> and for <u>3789</u> , Entered on 5/25/2023 (Rielly, Bill)
05/25/2023	<u>3795</u> Objection to (related document(s): <u>3788</u> Motion to shorten time to Expedited Discovery filed by Interested Party Hunter Mountain Trust, <u>3791</u> Motion to continue hearing on (related documents <u>3760</u> Support/supplemental document) <i>in the Alternative</i> filed by Interested Party Hunter Mountain Trust) <i>Objection to Hunter Mountain Investment Trust's Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of June 8, 2023 Hearing</i> filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC. (Bailey, Christopher)
05/25/2023	<u>3796</u> Response opposed to (related document(s): <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Annable, Zachery)
05/25/2023	<u>3797</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3796</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
05/25/2023	<u>3798</u> Joint Response opposed to (related document(s): <u>3788</u> Motion to shorten time to Expedited Discovery filed by Interested Party Hunter Mountain Trust, <u>3791</u> Motion to continue hearing on (related documents <u>3760</u> Support/supplemental document) <i>in the Alternative</i> filed by Interested Party Hunter Mountain Trust) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Attachments: # <u>1</u> Exhibit 1) (Stancil, Mark)
05/26/2023	<u>3799</u> Request for transcript regarding a hearing held on 5/26/2023. The requested turn-around time is hourly. (Edmond, Michael)
05/26/2023	<u>3800</u> Order Granting In Part Hunter Mountain Investment Trust's Emergency motion for Expedited Discovery (related document # <u>3788</u> ) and Denying Motion to Continue June 8, 2023 Hearing (related document # <u>3791</u> ) Entered on 5/26/2023. (Okafor, Marcey)
05/26/2023	<u>3825</u> Hearing held on 5/26/2023. (RE: related document(s) <u>3789</u> Motion for expedited hearing(related documents <u>3788</u> Motion to extend/shorten time) filed by Interested Party

	Hunter Mountain Trust), (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Court issued parameters for 6/8/23 hearing.) (Edmond, Michael) (Entered: 06/08/2023)
05/26/2023	3826 Hearing held on 5/26/2023. (RE: related document(s) <u>3791</u> Motion to continue hearing on (related documents <u>3760</u> Support/supplemental document) in the Alternative filed by Interested Party Hunter Mountain Trust (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion denied.) (Edmond, Michael) (Entered: 06/08/2023)
05/26/2023	3827 Hearing held on 5/26/2023. (RE: related document(s) <u>3788</u> Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust, (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion granted in part.) (Edmond, Michael) (Entered: 06/08/2023)
05/28/2023	<u>3801</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3800</u> Order Granting In Part Hunter Mountain Investment Trust's Emergency motion for Expedited Discovery (related document # <u>3788</u> ) and Denying Motion to Continue June 8, 2023 Hearing (related document <u>3791</u> ) Entered on 5/26/2023.) No. of Notices: 1. Notice Date 05/28/2023. (Admin.)
05/31/2023	<u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. Filed by Creditor The Dugaboy Investment Trust Objections due by 6/21/2023. (Aigen, Michael)
05/31/2023	<u>3803</u> Declaration re: <i>Declaration of Hartmann in Support of Motion to Compel</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. ). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit) (Aigen, Michael)
05/31/2023	<u>3804</u> Declaration re: <i>Declaration of Laykin in Support of Motion to Compel</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. ). (Attachments: # <u>1</u> Exhibit) (Aigen, Michael)
05/31/2023	<u>3805</u> Declaration re: <i>Declaration of Smith in Support of Motion to Compel</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. ). (Attachments: # <u>1</u> Exhibit) (Aigen, Michael)
05/31/2023	<u>3806</u> Declaration re: <i>Declaration of Aigen in Support of Motion to Compel</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. ). (Aigen, Michael)
05/31/2023	<u>3807</u> Support/supplemental document <i>Appendix in Support of Motion to Compel</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. ). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit # <u>6</u> Exhibit # <u>7</u> Exhibit # <u>8</u> Exhibit # <u>9</u> Exhibit # <u>10</u> Exhibit # <u>11</u> Exhibit # <u>12</u> Exhibit # <u>13</u> Exhibit # <u>14</u> Exhibit # <u>15</u> Exhibit # <u>16</u> Exhibit # <u>17</u> Exhibit # <u>18</u> Exhibit # <u>19</u> Exhibit # <u>20</u> Exhibit # <u>21</u> Exhibit # <u>22</u> Exhibit # <u>23</u> Exhibit # <u>24</u> Exhibit # <u>25</u> Exhibit # <u>26</u> Exhibit # <u>27</u> Exhibit # <u>28</u> Exhibit # <u>29</u> Exhibit # <u>30</u> Exhibit # <u>31</u> Exhibit # <u>32</u> Exhibit # <u>33</u> Exhibit) (Aigen, Michael)
05/31/2023	<u>3808</u> CIRCUIT COURT letter in re: Order granting motion for leave to appeal. Circuit Court Case 23–10534 (RE: related document(s) <u>3685</u> Notice of docketing notice of appeal. Civil Action Number: 3:23–cv–00573–E. (RE: related document(s) <u>3682</u> Notice of appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint

	Advisors, L.P. (RE: related document(s) <a href="#">3671</a> Memorandum of opinion, <a href="#">3672</a> Order on motion for leave). (Whitaker, Sheniqua)
05/31/2023	<a href="#">3809</a> Order granting motion to seal exhibits F and K (related document # <a href="#">3722</a> ) Entered on 5/31/2023. (Okafor, Marcey)
05/31/2023	<a href="#">3810</a> DUPLICATE ENTRY: See # <a href="#">3809</a> – Order granting motion to seal exhibits F and K (related document <a href="#">3722</a> ) Entered on 5/31/2023. (Okafor, Marcey) Modified on 6/1/2023 (Okafor, Marcey).
05/31/2023	<a href="#">3811</a> Certificate of service re: 1) <i>Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation</i> ; and 2) <i>Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">3796</a> Response opposed to (related document(s): <a href="#">3752</a> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, <a href="#">3797</a> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <a href="#">3796</a> Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
06/01/2023	<a href="#">3812</a> Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3773</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3677</a> Order on motion to extend/shorten time)). (Annable, Zachery)
06/01/2023	<a href="#">3813</a> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
06/01/2023	<a href="#">3814</a> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Annable, Zachery)
06/01/2023	Receipt Number 339719, Fee Amount \$207.00 (RE: related document(s) <a href="#">3808</a> CIRCUIT COURT letter in re: Order granting motion for leave to appeal. Circuit Court Case 23-10534 (RE: related document(s) <a href="#">3685</a> Notice of docketing notice of appeal. Civil Action Number: 3:23-cv-00573-E. (RE: related document(s) <a href="#">3682</a> Notice of appeal. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <a href="#">3671</a> Memorandum of opinion, <a href="#">3672</a> Order on motion for leave). (Whitaker, Sheniqua)) (Okafor, Marcey). (Entered: 06/02/2023)
06/05/2023	<a href="#">3815</a> Support/supplemental document <i>Doc 3699 – Emergency Motion for Leave to File Verified Adversary Proceeding with Redaction</i> filed by Interested Party Hunter Mountain Trust (RE: related document(s) <a href="#">3760</a> Support/supplemental document). (Attachments: # <a href="#">1</a> Exhibit) (McEntire, Sawnie)
06/05/2023	<a href="#">3816</a> Support/supplemental document <i>to Doc 3699 – Emergency Motion for Leave to File Verified Adversary Proceeding with Redaction</i> filed by Interested Party Hunter Mountain Trust (RE: related document(s) <a href="#">3760</a> Support/supplemental document, <a href="#">3815</a> Support/supplemental document). (Attachments: # <a href="#">1</a> Exhibit) (McEntire, Sawnie)
06/05/2023	<a href="#">3817</a> Witness and Exhibit List for hearing on June 8, 2023 on Hunter Mountain Investment Trusts Emergency Motion for Leave to File Verified Adversary Petition [Docket No. 3699] and Hunter Mountain Investment Trusts Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] filed by Debtor Highland

	Capital Management, L.P. (RE: related document(s) <u>3783</u> Response). (Attachments: # <u>1</u> Exhibits 1–4 # <u>2</u> Exhibit 5 part 1 # <u>3</u> Exhibit 5 part 2 # <u>4</u> Exhibits 6–42 # <u>5</u> Exhibits 43–60) (Annable, Zachery)
06/05/2023	<u>3818</u> Witness and Exhibit List in Connection with HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3783</u> Response). (Attachments: # <u>1</u> Exhibit Exhibits 1–10 # <u>2</u> Exhibit Exhibits 11–30 # <u>3</u> Exhibit Exhibits 31–52 # <u>4</u> Exhibit Exhibits 53–58 # <u>5</u> Exhibit Exhibits 59 # <u>6</u> Exhibit Exhibits 60 # <u>7</u> Exhibit Exhibits 61–72 # <u>8</u> Exhibit Exhibit 73 # <u>9</u> Exhibit Exhibits 74–80) (McEntire, Sawnie)
06/07/2023	<u>3819</u> Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. (re: <u>3773</u> Motion to extend time.) Entered on 6/7/2023. (Okafor, Marcey)
06/07/2023	<u>3820</u> Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. Objections due by 6/8/2023. (Stancil, Mark) Modified text on 6/8/2023 (Tello, Chris).
06/07/2023	<u>3821</u> Declaration re: <i>Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i> filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s) <u>3820</u> Motion for leave / <i>Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i> ). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Levy, Joshua)
06/07/2023	<u>3822</u> WITHDRAWN at docket # <u>3901</u> . Motion to file document under seal. <i>Exhibit</i> Filed by Interested Party Hunter Mountain Trust (Attachments: # <u>1</u> Proposed Order) (McEntire, Sawnie) Modified on 8/18/2023 (Ecker, C.).
06/07/2023	<u>3823</u> Joinder by <i>Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i> filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s) <u>3820</u> Motion for leave / <i>Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i> ). (Bailey, Christopher)
06/07/2023	<u>3824</u> Objection to (related document(s): <u>3817</u> List (witness/exhibit/generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Hunter Mountain Trust. (McEntire, Sawnie)
06/08/2023	<u>3828</u> Response opposed to (related document(s): <u>3820</u> Motion for leave / <i>Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i> filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (McEntire, Sawnie)
06/08/2023	<u>3830</u> Certificate of service re: 1) The Highland Parties Notice of Service of a Subpoena for James Dondero to Appear and Testify at a Hearing in a Bankruptcy Case; and 2) The Highland Parties Notice of Service of a Subpoena for Mark Patrick to Appear and Testify at a Hearing in a Bankruptcy Case Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3813</u> Subpoena on James Dondero filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust, <u>3814</u> Subpoena on Mark Patrick filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)

06/08/2023	<p>3839 Hearing held on 6/8/2023. (RE: related document(s)<u>3699</u> Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) (Appearances: S. McIntire, R. McCleary, and T. Miller for Movant; J. Morris and J. Pomeranz for Reorganized Debtor; M. Stancil and J. Levy for J. Seery; B. McIlwaine for Claims Purchasers. Evidentiary hearing. Court took matter under advisement. Court will review motion to exclude and response and reply (the latter of which is due 6/12/23) and decide whether a second day of evidence (30 minutes each side) will be permitted for expert testimony. Court will notify parties of ruling on this through CRD as soon as possible after 6/12/23.) (Edmond, Michael) (Entered: 06/12/2023)</p>
06/09/2023	<p><u>3831</u> PDF with attached Audio File. Court Date &amp; Time [05/26/2023 12:53:45 PM]. File Size [ 12260 KB ]. Run Time [ 01:52:51 ]. (admin).</p>
06/09/2023	<p><u>3832</u> PDF with attached Audio File. Court Date &amp; Time [06/08/2023 02:01:09 PM]. File Size [ 10250 KB ]. Run Time [ 01:32:41 ]. (admin).</p>
06/09/2023	<p><u>3833</u> PDF with attached Audio File. Court Date &amp; Time [06/08/2023 02:02:00 PM]. File Size [ 53640 KB ]. Run Time [ 03:49:59 ]. (admin).</p>
06/09/2023	<p><u>3834</u> PDF with attached Audio File. Court Date &amp; Time [06/08/2023 02:02:56 PM]. File Size [ 76934 KB ]. Run Time [ 05:29:29 ]. (admin).</p>
06/09/2023	<p><u>3835</u> PDF with attached Audio File. Court Date &amp; Time [06/08/2023 02:03:54 PM]. File Size [ 36710 KB ]. Run Time [ 02:37:00 ]. (admin).</p>
06/09/2023	<p><u>3836</u> PDF with attached Audio File. Court Date &amp; Time [06/08/2023 02:04:32 PM]. File Size [ 36702 KB ]. Run Time [ 02:36:58 ]. (admin).</p>
06/09/2023	<p><u>3837</u> Request for transcript regarding a hearing held on 6/8/2023. The requested turn-around time is hourly. (Edmond, Michael)</p>
06/12/2023	<p><u>3838</u> Court admitted exhibits date of hearing June 8, 2023 (RE: related document(s)<u>3699</u> Motion for leave to File Verified Adversary Proceeding, filed by Creditor Hunter Mountain Investment Trust; (COURT ADMITTED THE FOLLOWING MOVANT/HUNTER MOUNTAIN INVESTMENT TRUST EXHIBITS; EXHIBITS #3, #4, #7, #8, #9, 10, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #26 Through #38, #53 Through #75, #77 Through #80; Exhibits #24 &amp; #25 Were Not Admitted; Exhibits #29 Through #52 Were Carried &amp; Exhibit #76 Carried/BY ATTY SAWNIE A. MCINTIRE; COURT ADMITTED DEFENDANT/HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST FOLLOWING EXHIBITS: EXHIBITS #1 THROUGH #16, EXHIBITS #25 THROUGH #31A, EXHIBITS #32, #33, 34, #36, #39, #40, #41, #45, #51, #59, &amp; #60, BY ATTY JOHN MORRIS) (Edmond, Michael)</p>
06/12/2023	<p><u>3840</u> Notice to Withdraw Certain Filings filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Get Good Trust, NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, The Dugaboy Investment Trust (RE: related document(s)<u>3629</u> Motion to redact/restrict Redact (related document(s): <u>3623</u>) (Fee Amount \$26) filed by Interested Party James Dondero (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order), <u>3632</u> Motion to file document under seal. Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). (Lang, Michael)</p>
06/12/2023	<p><u>3841</u> Reply to (related document(s): <u>3828</u> Response filed by Creditor Hunter Mountain Investment Trust) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr.. (Stancil, Mark)</p>
06/12/2023	

	<p><u>3842</u> Joinder by <i>Claim Purchasers' Joinder to Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery Jr.'s Reply in Further Support of Their Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i> filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s)<u>3841</u> Reply). (Bailey, Christopher)</p>
06/13/2023	<p><u>3843</u> Transcript regarding Hearing Held 06/08/2023 Before Judge Stacey G.C. Jernigan (389 Pages) RE: Motion for Leave to File Verified Adversary Proceeding (3699). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3839 Hearing held on 6/8/2023. (RE: related document(s)<u>3699</u> Motion for leave to File Verified Adversary Proceeding filed by Creditor Hunter Mountain Investment Trust) (Appearances: S. McIntire, R. McCleary, and T. Miller for Movant; J. Morris and J. Pomeranz for Reorganized Debtor; M. Stancil and J. Levy for J. Seery; B. McIlwaine for Claims Purchasers. Evidentiary hearing. Court took matter under advisement. Court will review motion to exclude and response and reply (the latter of which is due 6/12/23) and decide whether a second day of evidence (30 minutes each side) will be permitted for expert testimony. Court will notify parties of ruling on this through CRD as soon as possible after 6/12/23.)). Transcript to be made available to the public on 09/11/2023. (Rehling, Kathy)</p>
06/13/2023	<p><u>3844</u> Transcript regarding Hearing Held 05/26/2023 Before Judge Stacey G.C. Jernigan (54 Pages) RE: Motion for Expedited Hearing filed by Interested Party Hunter Mountain Trust (3789); Motion to Continue Hearing filed by Interested Party Hunter Mountain Trust (3791); and Motion for Expedited Discovery filed by Interested Party Hunter Mountain Trust (3788). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3825 Hearing held on 5/26/2023. (RE: related document(s)<u>3789</u> Motion for expedited hearing(related documents <u>3788</u> Motion to extend/shorten time) filed by Interested Party Hunter Mountain Trust), (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Court issued parameters for 6/8/23 hearing.), 3826 Hearing held on 5/26/2023. (RE: related document(s)<u>3791</u> Motion to continue hearing on (related documents <u>3760</u> Support/supplemental document) in the Alternative filed by Interested Party Hunter Mountain Trust (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion denied.), 3827 Hearing held on 5/26/2023. (RE: related document(s)<u>3788</u> Motion to shorten time to Expedited Discovery Filed by Interested Party Hunter Mountain Trust, (Appearances: S. McEntyre for HMIT; J. Morris for Highland; J. Levy and M. Stancil for J. Seery; B. McIlwaine for Claims Purchasers. Nonevidentiary hearing. Motion granted in part.)). Transcript to be made available to the public on 09/11/2023. (Rehling, Kathy)</p>
06/13/2023	<p><u>3845</u> Request for hearing filed by Interested Party Hunter Mountain Trust (RE: related document(s)<u>3820</u> Motion for leave / <i>Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully</i>). (McEntire, Sawnie)</p>
06/13/2023	<p><u>3846</u> Support/supplemental document/ <i>Response in Opposition to Hunter Mountain Investment Trust's Request for Oral Argument or, Alternatively, a Schedule for Evidentiary Proffer</i> filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. (RE: related document(s)<u>3845</u> Request for hearing). (Stancil, Mark)</p>
06/14/2023	

	<u>3847</u> Support/supplemental document <i>Reply to Highland Parties Response in Opposition [Doc. 3846]</i> filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3845</u> Request for hearing, <u>3846</u> Support/supplemental document). (McEntire, Sawnie)
06/15/2023	<u>3848</u> Notice of hearing filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. Filed by Creditor The Dugaboy Investment Trust Objections due by 6/21/2023.). Hearing to be held on 8/14/2023 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3802</u> , (Aigen, Michael)
06/15/2023	<u>3849</u> Stipulation by James P. Seery Jr. and The Dugaboy Investment Trust. filed by Creditor James P. Seery Jr. (RE: related document(s) <u>3802</u> Motion to compel Forensic Imaging of James P Seery, Jr.'s iPhone. ). (Alaniz, Omar)
06/15/2023	<u>3850</u> Certificate of service re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3819</u> Order further extending period within which the Reorganized Debtor may remove actions pursuant to 28 U.S.C. Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. (re: <u>3773</u> Motion to extend time.) Entered on 6/7/2023.). (Kass, Albert)
06/16/2023	<u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
06/16/2023	<u>3852</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I) (Annable, Zachery)
06/16/2023	<u>3853</u> Memorandum of opinion regarding joint motion to exclude expert evidence (RE: related document(s) <u>3820</u> Motion for leave filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). Entered on 6/16/2023 (Okafor, Marcey)
06/16/2023	<u>3854</u> Order granting joint motion to exclude testimony and documents of Scott Van Meter and Steve Pully filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (related document # <u>3820</u> ) Entered on 6/16/2023. (Okafor, Marcey)
06/16/2023	<u>3855</u> Order approving stipulation extending James P. Seery, Jr.'s deadline to file a response to The Dugaboy Investment Trust's Motion to preserve evidence and compel forensic imaging (RE: related document(s) <u>3849</u> Stipulation filed by Creditor James P. Seery, Other Professional James P. Seery). Entered on 6/16/2023 (Okafor, Marcey)
06/16/2023	<u>3856</u> DUPLICATE ENTRY: See # <u>3855</u> – Order approving stipulation extending James P. Seery, Jr.'s deadline to file a response to The Dugaboy Investment Trust's Motion to preserve evidence and compel forensic imaging (RE: related document(s) <u>3849</u> Stipulation filed by Creditor James P. Seery, Other Professional James P. Seery). Entered on 6/16/2023 (Okafor, Marcey) Modified on 6/16/2023 (Okafor, Marcey).
06/16/2023	

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	<u>3857</u> Reply to (related document(s): <u>3796</u> Response filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Proposed Order) (Hopkins, Jason)
06/19/2023	<u>3858</u> PUBLIC ACCESS RESTRICTED PER ORDER # <u>3689</u> STRIKING FROM DOCKET: Support/supplemental document <i>Evidentiary Proffer Pursuant to Rule 103(a)(2)</i> filed by Interested Party Hunter Mountain Trust (RE: related document(s) <u>3760</u> Support/supplemental document, <u>3854</u> Order on motion for leave). (Attachments: # <u>1</u> Exhibit Declaration of Scott Van Meter # <u>2</u> Exhibit Declaration of Steven Pully) (McEntire, Sawnie) Modified on 7/6/2023 (Okafor, Marcey).
06/19/2023	<u>3859</u> DISTRICT COURT NOTICE OF APPEAL as to 18 Memorandum Opinion and Order, to the Fifth Circuit by CLO Holdco Ltd (RE: related document(s) <u>3527</u> Notice of docketing notice of appeal. Civil Action Number: 3:22-cv-02051-B. (RE: related document(s) <u>3495</u> Amended notice of appeal filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>3475</u> Notice of appeal). (Attachments: # 1 Exhibit A – Order Denying Motion to Ratify Second Amended Proof of Claim and Expunging Claim # 2 Exhibit B Notice of Appeal))) (Whitaker, Sheniqua) (Entered: 06/21/2023)
06/23/2023	<u>3860</u> Motion to strike (related document(s): <u>3858</u> Support/supplemental document filed by Interested Party Hunter Mountain Trust) <i>The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer</i> filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, Creditor James P. Seery Jr. (Stancil, Mark)
06/23/2023	<u>3861</u> Joinder by filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, Stonehill Capital Management LLC (RE: related document(s) <u>3860</u> Motion to strike (related document(s): <u>3858</u> Support/supplemental document filed by Interested Party Hunter Mountain Trust) <i>The Highland Parties' Objections to and Motion to Strike Hunter Mountain Investment Trust's Purported Proffer</i>
06/23/2023	<u>3862</u> Joinder by filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ). (Deutsch-Perez, Deborah)
06/26/2023	<u>3863</u> Request for transcript regarding a hearing held on 6/26/2023. The requested turn-around time is hourly (Smith, C)
06/26/2023	<u>3864</u> Hearing held on 6/26/2023. (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Appearances: A. Ruhland for Movants; D. Deutsch-Perez for Hunter Mountain Trust; J. Morris for Reorganized Debtor. Nonevidentiary hearing (written evidence only). Court continued matter to 7/7/23 at 1:00 pm and directed submission of list of all pending litigation in any court involving the Reorganized Debtor in some capacity and a balance sheet for trust assets before next hearing. Court also directed Movants/Mr. Dondero to make a good faith starting offer to Reorganized Debtor before then. Court will decide at next hearing whether to order mediation. (Ellison, Traci) (Entered: 06/28/2023)
06/26/2023	<u>3865</u> Hearing continued (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Hearing to be held on 7/7/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , (Ellison, Traci) (Entered: 06/28/2023)

06/28/2023	<u>3866</u> Certificate of service re: 1) Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against Nexpoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against Nexpoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>3852</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/29/2023	<u>3867</u> Order granting stipulation withdrawing Movants' motion for leave to file proceeding (RE: related document(s) <u>3775</u> Stipulation filed by Creditor Hunter Mountain Investment Trust, Creditor The Dugaboy Investment Trust). Entered on 6/29/2023 (Okafor, Marcey)
06/29/2023	<u>3868</u> Motion to continue hearing on (related documents <u>3752</u> Motion to compel)( <i>Unopposed Motion to Continue</i> ) Filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (Hopkins, Jason)
07/05/2023	<u>3869</u> Order granting(document # <u>3860</u> ) motion to strike(regarding document: <u>3858</u> HMIT's Evidentiary Proffer filed by Interested Party Hunter Mountain Trust) Entered on 7/5/2023. (Okafor, Marcey)
07/05/2023	<u>3870</u> Order granting motion to continue hearing on (related document # <u>3868</u> ) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , Entered on 7/5/2023. (Okafor, Marcey)
07/05/2023	<u>3871</u> DUPLICATE ENTRY: SEE # <u>3870</u> – Order granting motion to continue hearing on (related document <u>3868</u> ) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , Entered on 7/5/2023. (Okafor, Marcey) Modified on 7/5/2023 (Okafor, Marcey).
07/06/2023	<u>3872</u> Notice ( <i>Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3870</u> Order granting motion to continue hearing on (related document <u>3868</u> ) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , Entered on 7/5/2023.). (Annable, Zachery)
07/06/2023	<u>3873</u> Notice ( <i>Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3870</u> Order granting motion to continue hearing on (related document <u>3868</u> ) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , Entered on 7/5/2023.). (Annable, Zachery)

07/06/2023	<u>3874</u> Stipulation by James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust and Highland Capital Management, L.P.. filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ). (Attachments: # <u>1</u> Proposed Order) (Hopkins, Jason)
07/07/2023	<u>3875</u> PDF with attached Audio File. Court Date & Time [06/26/2023 03:52:42 PM]. File Size [ 32789 KB ]. Run Time [ 02:20:26 ]. (admin).
07/12/2023	<u>3876</u> Order approving joint stipulation of the parties suspending certain deadlines until the Bankruptcy Court determines the Mediation Motion (RE: related document(s) <u>3874</u> Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/12/2023 (Okafor, Marcey)
07/12/2023	<u>3877</u> DUPLICATE ENTRY: SEE # <u>3876</u> – Order approving joint stipulation of the parties suspending certain deadlines until the Bankruptcy Court determines the Mediation Motion (RE: related document(s) <u>3874</u> Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/12/2023 (Okafor, Marcey) Modified on 7/13/2023 (Okafor, Marcey).
07/13/2023	<u>3878</u> Notice ( <i>Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/13/2023	<u>3879</u> Notice ( <i>Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/14/2023	<u>3880</u> Amended Notice ( <i>Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3873</u> Notice ( <i>Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>3870</u> Order granting motion to continue hearing on (related document <u>3868</u> ) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> ) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , Entered on 7/5/2023.). (Annable, Zachery)
07/18/2023	<u>3881</u> INCORRECT EVENT: Amended Notice of <i>Hearing</i> filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). (Attachments: # <u>1</u> Exhibit A) (Hopkins, Jason) Modified on 7/19/2023 (Ecker, C.).
07/19/2023	<u>3882</u> Amended Notice of hearing filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/21/2023 at 12:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , (Attachments: # <u>1</u> Exhibit A) (Hopkins, Jason)
07/19/2023	<u>3883</u> Amended Notice of hearing <i>Correcting Hearing Day Listed on Previous Hearing Notice</i> <u>3882</u> filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s) <u>3752</u> Motion to compel

	Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/21/2023 at 12:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> , (Attachments: # <u>1</u> Exhibit A) (Hopkins, Jason)
07/19/2023	<u>3884</u> Notice ( <i>Notice of Filing of Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
07/20/2023	<u>3885</u> Notice of Change of Firm Affiliation filed by Interested Party James Dondero, Get Good Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Hopkins, Jason)
07/21/2023	<u>3886</u> PDF with attached Audio File. Court Date & Time [07/21/2023 03:54:16 PM]. File Size [ 14727 KB ]. Run Time [ 01:03:18 ]. (admin).
07/21/2023	<u>3887</u> Order approving joint stipulation of the parties suspending certain deadlines until The Bankruptcy Court determines the mediation motion (RE: related document(s) <u>3874</u> Stipulation filed by Interested Party James Dondero, Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, Creditor Strand Advisors, Inc.). Entered on 7/21/2023 (Okafor, Marcey)
07/21/2023	<u>3888</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 06/30/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
07/21/2023	<u>3889</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 06/30/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
07/21/2023	<u>3891</u> Hearing held on 7/21/2023. (RE: related document(s) <u>3752</u> Motion to compel Mediation / Motion to Stay and to Compel Mediation, filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero; (Appearances: A. Ruhland for Movants; D. Deitsche-Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Mediation will be ordered (and stay of pending bankruptcy matters for 90 days), as announced orally. Counsel to upload order.) (Edmond, Michael) (Entered: 07/25/2023)
07/24/2023	<u>3890</u> Request for transcript regarding a hearing held on 7/21/2023. The requested turn-around time is ordinary 30 day (Jeng, Hawaii)
07/27/2023	<u>3892</u> Transcript regarding Hearing Held 6/26/2023 RE: Motions Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/25/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel/Liberty Transcripts, Telephone number (847) 848-4907. (RE: related document(s) 3864 Hearing held on 6/26/2023. (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Appearances: A. Ruhland for Movants; D. Deutsch-Perez for Hunter Mountain Trust; J. Morris for Reorganized Debtor. Nonevidentiary hearing (written evidence only). Court continued matter to 7/7/23 at 1:00 pm and directed submission of list of all pending litigation in any court involving the Reorganized Debtor in some capacity and a balance sheet for trust assets before next hearing. Court also directed Movants/Mr. Dondero to make a good faith starting offer to Reorganized Debtor before then. Court will decide at next hearing whether to order mediation., <u>3865</u> Hearing continued (RE: related document(s) <u>3752</u> Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i> Filed by Strand

	Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero Objections due by 5/11/2023. (Attachments: # 1 Exhibit A # 2 Exhibit B)) Hearing to be held on 7/7/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u> ). Transcript to be made available to the public on 10/25/2023. (Patel, Dipti)
07/28/2023	<u>3894</u> Hearing held on 7/28/2023. (RE: related document(s) <u>3752</u> Motion to compel Mediation. Motion to Stay and to Compel Mediation filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero.) (Appearances: A. Ruhland for Movants; D. Deitsch-Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court accepted announcement of an agreed order regarding mediation. Order will be submitted electronically when parties selection of mediator has been finalized.) (Edmond, Michael)
07/31/2023	<u>3896</u> PDF with attached Audio File. Court Date & Time [07/28/2023 09:36:01 AM]. File Size [ 4616 KB ]. Run Time [ 00:19:45 ]. (admin).
08/02/2023	<u>3897</u> Order granting in part, denying in part motion to stay and to compel mediation (related document # <u>3752</u> ) Entered on 8/2/2023. (Okafor, Marcey)
08/10/2023	<u>3899</u> DISTRICT COURT Opinion of USCA in accordance with USCA judgment re 39 Notice of Appeal filed by NexPoint Advisors LP. re: appeal on appellate case number: 22-10575, AFFIRMED (RE: related document(s) <u>3077</u> Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Civil case 3:21-cv-03086-K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 08/16/2023)
08/10/2023	<u>3900</u> DISTRICT COURT JUDGMENT/MANDATE of USCA as to 39 Notice of Appeal filed by NexPoint Advisors LP. IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED re: appeal on appellate case number: 22-10575, AFFIRMED (RE: related document(s) <u>3077</u> Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Civil case 3:21-cv-03086-K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 08/16/2023)
08/10/2023	<u>4092</u> DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22-10575, AFFIRMED (RE: related document(s) <u>3077</u> Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). 3:21-cv-03086-K Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 06/13/2024)
08/10/2023	<u>4093</u> DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22-10575, AFFIRMED (RE: related document(s) <u>3077</u> Notice of appeal filed by Interested Party NexPoint Real Estate Advisors, L.P.). Entered on 8/10/2023 (Whitaker, Sheniqua) (Entered: 06/13/2024)
08/15/2023	<u>3898</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>3822</u> Motion to file document under seal. <i>Exhibit</i> Filed by Interested Party Hunter Mountain Trust (Attachments: # 1 Proposed Order)) Responses due by 8/22/2023. (Ecker, C.)
08/17/2023	<u>3901</u> Withdrawal of HMIT's Unopposed Motion to File Exhibit Under Seal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3822</u> Motion to file document under seal. <i>Exhibit</i> ). (McEntire, Sawnie)
08/21/2023	<u>3921</u> DISCTRICT COURT Opinion from circuit court re: appeal on appellate case number: 22-10983, AFFIRMED (RE: related document(s) <u>2398</u> Notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust). Civil Case 3:21-cv-01295-X Entered on 8/21/2023 (Whitaker, Sheniqua) (Entered: 09/20/2023)
08/21/2023	<u>3922</u> DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22-10983, AFFIRMED (RE: related document(s) <u>2398</u> Notice of appeal filed by Creditor

	The Dugaboy Investment Trust, Creditor Get Good Trust). Civil Case 3:21-cv-01295-X Entered on 8/21/2023 (Whitaker, Sheniqua) (Entered: 09/20/2023)
08/22/2023	<u>3902</u> Transcript regarding Hearing Held 07/21/2023 Before Judge Stacey G.C. Jernigan (26 pages) RE: Motion to Stay and to Compel Mediation (#3752). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/20/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3891 Hearing held on 7/21/2023. (RE: related document(s) <u>3752</u> Motion to compel Mediation / Motion to Stay and to Compel Mediation, filed by Strand Advisors, Inc., Get Good Trust, The Dugaboy Investment Trust, Interested Party James Dondero; (Appearances: A. Ruhland for Movants; D. Deitsche-Perez for HMIT; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Mediation will be ordered (and stay of pending bankruptcy matters for 90 days), as announced orally. Counsel to upload order.)). Transcript to be made available to the public on 11/20/2023. (Rehling, Kathy)
08/22/2023	<u>3919</u> DISTRICT COURT Opinion from circuit court re: appeal on appellate case number: 22-10960, AFFIRMED (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust. Civil Case 3:21-cv-00261-L Entered on 8/22/2023 (Whitaker, Sheniqua). (Entered: 09/20/2023)
08/22/2023	<u>3920</u> DISTRICT COURT Order from circuit court re: appeal on appellate case number: 22-10960, AFFIRMED (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust. Civil Case 3:21-cv-00261- Entered on 8/22/2023 (Whitaker, Sheniqua). (Entered: 09/20/2023)
08/25/2023	<u>3903</u> Memorandum of Opinion Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders"; Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (RE: related document(s) <u>3699</u> Motion for leave filed by Creditor Hunter Mountain Investment Trust and Supplemental documents # <u>3760</u> , <u>3815</u> , <u>3816</u> ). Entered on 8/25/2023 (Okafor, Marcey)
08/25/2023	<u>3904</u> Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders" Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding (RE: related document(s) <u>3699</u> Motion for leave filed by Creditor Hunter Mountain Investment Trust and Supplemental documents # <u>3760</u> , <u>3815</u> , <u>3816</u> ) Entered on 8/25/2023. (Okafor, Marcey)
09/08/2023	<u>3905</u> Motion to Reconsider(related documents <u>3903</u> Memorandum of opinion, <u>3904</u> Order on motion for leave) <i>to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief</i> Filed by Creditor Hunter Mountain Investment Trust (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit # <u>6</u> Proposed Order) (McEntire, Sawnie)
09/08/2023	<u>3906</u> Notice of appeal of <i>Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3904</u> Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # <u>1</u> Exhibit Ex. 1 # <u>2</u> Exhibit Ex. 2 # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit # <u>6</u> Exhibit # <u>7</u> Exhibit # <u>8</u> Exhibit)(McEntire, Sawnie)
09/08/2023	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number C30715984, amount \$ 298.00 (re: Doc# <u>3906</u> ). (U.S. Treasury)
09/11/2023	

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	<u>3907</u> Clerk's correspondence requesting to amend notice of appeal from attorney for creditor. (RE: related document(s) <u>3906</u> Notice of appeal of <i>Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3904</u> Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) Responses due by 9/13/2023. (Whitaker, Sheniqua)
09/12/2023	<u>3908</u> Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit # <u>6</u> Exhibit # <u>7</u> Exhibit # <u>8</u> Exhibit)(McEntire, Sawnie)
09/13/2023	<u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Stancil, Mark)
09/13/2023	<u>3911</u> Trustee's motion <i>to be included in mediation (Order Doc. No. 3897)</i> . Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4)(Seidel, Scott)
09/13/2023	<u>3912</u> Declaration re: <i>Motion for Contempt</i> filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14) (Levy, Joshua)
09/13/2023	<u>3913</u> Notice of Appearance and Request for Notice by Scott M. Seidel filed by Attorney Scott M. Seidel. (Seidel, Scott)
09/13/2023	<u>3914</u> Declaration re: <i>Motion for Contempt</i> filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9) (Stancil, Mark)
09/15/2023	<u>3915</u> Certificate of mailing regarding appeal (RE: related document(s) <u>3908</u> Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
09/15/2023	<u>3916</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3908</u> Amended Notice of appeal of <i>Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3904</u> Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Whitaker, Sheniqua) (Entered: 09/19/2023)
09/15/2023	<u>3917</u> Notice of docketing notice of appeal. Civil Action Number: 3:23-cv-02071-E. (RE: related document(s) <u>3908</u> Amended notice of appeal filed by Creditor Hunter Mountain

	Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) (Whitaker, Sheniqua) (Entered: 09/19/2023)
09/20/2023	<u>3918</u> Notice of Appearance and Request for Notice <i>Hogan Lovells US LLP</i> by Susan B. Hersh filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.). (Hersh, Susan)
09/21/2023	<u>3923</u> Notice of Appearance and Request for Notice by Jerry C. Alexander filed by Attorney Scott M. Seidel. (Alexander, Jerry)
09/21/2023	<u>3924</u> Motion for ex parte relief <i>Request for Hearing on Trustee Scott Seidel's Motion to Be Included in Mediation</i> Filed by Attorney Scott M. Seidel (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Alexander, Jerry)
09/21/2023	<u>3925</u> BNC certificate of mailing. (RE: related document(s) <u>3916</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>3908</u> Amended Notice of appeal of <i>Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3904</u> Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)) No. of Notices: 1. Notice Date 09/21/2023. (Admin.)
09/22/2023	<u>3926</u> Notice of hearing filed by Attorney Scott M. Seidel (RE: related document(s) <u>3911</u> Trustee's motion <i>to be included in mediation (Order Doc. No. 3897)</i> . Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4)). Hearing to be held on 10/2/2023 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>3911</u> , (Alexander, Jerry)
09/22/2023	<u>3927</u> Response unopposed to (related document(s): <u>3911</u> Trustee's motion <i>to be included in mediation (Order Doc. No. 3897)</i> . Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Annable, Zachery)
09/22/2023	<u>3928</u> Notice <i>Regarding Appeal and Pending Post-Judgment Motion</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3905</u> Motion to Reconsider(related documents <u>3903</u> Memorandum of opinion, <u>3904</u> Order on motion for leave) <i>to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Relief</i> Filed by Creditor Hunter Mountain Investment Trust (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order), <u>3906</u> Notice of appeal of <i>Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding</i> . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3904</u> Order on motion for leave). Appellant Designation due by 09/22/2023. (Attachments: # 1 Exhibit Ex. 1 # 2 Exhibit Ex. 2 # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit), <u>3908</u> Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit), <u>3917</u> Notice of docketing notice of appeal. Civil Action Number: 3:23-cv-02071-E. (RE: related document(s) <u>3908</u> Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit)). (McEntire, Sawnie)

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09/25/2023	<u>3929</u> Order setting hearing (RE: related document(s) <u>3924</u> Motion for ex parte relief filed by Attorney Scott M. Seidel). Hearing to be held on 10/2/2023 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>3924</u> , Entered on 9/25/2023 (Okafor, Marcey)
09/27/2023	<u>3930</u> Response unopposed to (related document(s): <u>3911</u> Trustee's motion to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.) filed by Interested Party James Dondero, Get Good Trust, Hunter Mountain Investment Trust, Strand Advisors, Inc., The Dugaboy Investment Trust. (Deitsch-Perez, Deborah)
09/28/2023	<u>3931</u> Certificate of service re: The Highland Parties Response to Trustees Motion to Be Included in Mediation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3927</u> Response unopposed to (related document(s): <u>3911</u> Trustee's motion to be included in mediation (Order Doc. No. 3897). Filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P.) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)
10/02/2023	<u>3932</u> Hearing held on 10/2/2023. (RE: related document(s) <u>3911</u> Trustee's motion to be included in mediation (Order Doc. No. 3897), filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P., (Appearances: J. Alexander, for and with S. Seidel, Chapter 7 Trustee, G. Demo for Highland parties; D. Deitsche-Perez for Dugaboy and other Respondants. Nonevidentiary hearing. Motoin denied. Counsel to upload order.) (Edmond, Michael)
10/03/2023	<u>3933</u> Request for transcript regarding a hearing held on 10/2/2023. The requested turn-around time is hourly. (Edmond, Michael)
10/03/2023	<u>3934</u> Order on Trustee's motion to be included in mediation (related document # <u>3911</u> ) Entered on 10/3/2023. (Okafor, Marcey)
10/03/2023	<u>3935</u> Transcript regarding Hearing Held 10/02/2023 Before Judge Stacey G.C. Jernigan (34 Pages) RE: Trustee's Motion to be Included in Mediation (#3911). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/1/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>3932</u> Hearing held on 10/2/2023. (RE: related document(s) <u>3911</u> Trustee's motion to be included in mediation (Order Doc. No. 3897), filed by Chapter 7 trustee Scott Seidel, debtors Highland Select Equity Master Fund, L.P. and Highland Select Equity Fund, GP, L.P., (Appearances: J. Alexander, for and with S. Seidel, Chapter 7 Trustee, G. Demo for Highland parties; D. Deitsche-Perez for Dugaboy and other Respondants. Nonevidentiary hearing. Motoin denied. Counsel to upload order.)). Transcript to be made available to the public on 01/1/2024. (Rehling, Kathy)
10/05/2023	<u>3936</u> Order denying motion of Hunter Mountain Investment Trust seeking relief pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Proposed Order) (related document # <u>3905</u> ) Entered on 10/5/2023. (Okafor, Marcey)
10/05/2023	<u>3937</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3934</u> Order on Trustee's motion to be included in mediation (related document <u>3911</u> ) Entered on 10/3/2023.) No. of Notices: 0. Notice Date 10/05/2023. (Admin.)
10/09/2023	<u>3938</u> Motion to appear pro hac vice for Richard L. Wynne. Fee Amount \$100 Filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.) (Wynne, Richard)

10/10/2023	<u>3939</u> Motion to appear pro hac vice for Edward J. McNeilly. Fee Amount \$100 Filed by Interested Parties John S. Dubel , Hon.Russell F. Nelms (Ret.) (Ecker, C.) Additional attachment(s) added on 10/11/2023 (Ecker, C.).
10/10/2023	Receipt of Pro Hac Vice Filing Fee – \$100.00 by CE. Receipt Number 339899. (admin)
10/16/2023	<u>3940</u> Order granting motion to appear pro hac vice adding Richard L. Wynne for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document # <u>3938</u> ) Entered on 10/16/2023. (Okafor, Marcey)
10/16/2023	<u>3941</u> Order granting motion to appear pro hac vice adding Edward J. McNeilly for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document <u>3939</u> ) Entered on 10/16/2023. (Okafor, Marcey) Modified to add party on 10/16/2023 (Okafor, Marcey).
10/17/2023	Receipt of filing fee for Motion to Appear pro hac vice( <u>19-34054-sgj11</u> ) [motion,mprohac] ( 100.00). Receipt number A30817329, amount \$ 100.00 (re: Doc# <u>3938</u> ). (U.S. Treasury)
10/18/2023	<u>3942</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3940</u> Order granting motion to appear pro hac vice adding Richard L. Wynne for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document <u>3938</u> ) Entered on 10/16/2023.) No. of Notices: 1. Notice Date 10/18/2023. (Admin.)
10/18/2023	<u>3943</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>3941</u> Order granting motion to appear pro hac vice adding Edward J. McNeilly for John S. Dubel and Hon.Russell F. Nelms (Ret.) (related document <u>3939</u> ) Entered on 10/16/2023. (Okafor, Marcey) Modified to add party on 10/16/2023 .) No. of Notices: 1. Notice Date 10/18/2023. (Admin.)
10/19/2023	<u>3944</u> PDF with attached Audio File. Court Date & Time [10/02/2023 02:02:15 PM]. File Size [ 13137 KB ]. Run Time [ 00:56:07 ]. (admin).
10/19/2023	<u>3945</u> Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit Ex. 1 # <u>2</u> Exhibit Ex. 2 # <u>3</u> Exhibit Ex. 3 # <u>4</u> Exhibit Ex. 4 # <u>5</u> Exhibit Ex. 5 # <u>6</u> Exhibit Ex. 5a # <u>7</u> Exhibit Ex. 6 # <u>8</u> Exhibit Ex. 7 # <u>9</u> Exhibit Ex. 8 # <u>10</u> Exhibit Ex. 9)(McEntire, Sawnie)
10/19/2023	<u>3946</u> INCORRECT ENTRY. Incorrect event code. Statement of issues on appeal, <i>and Designation of Items for Inclusion in the Appellate Record</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal, <u>3945</u> Amended notice of appeal). (McEntire, Sawnie) Modified on 10/20/2023 (Whitaker, Sheniqua).
10/20/2023	<u>3947</u> INCORRECT ENTRY. Incomplete Form. Clerk's correspondence regarding second amended notice of appeal from attorney for appellant. (RE: related document(s) <u>3945</u> Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit Ex. 1 # <u>2</u> Exhibit Ex. 2 # <u>3</u> Exhibit Ex. 3 # <u>4</u> Exhibit Ex. 4 # <u>5</u> Exhibit Ex. 5 # <u>6</u> Exhibit Ex. 5a # <u>7</u> Exhibit Ex. 6 # <u>8</u> Exhibit Ex. 7 # <u>9</u> Exhibit Ex. 8 # <u>10</u> Exhibit Ex. 9)) Responses due by 10/23/2023. (Whitaker, Sheniqua)
10/20/2023	<u>3948</u> INCORRECT ENTRY. Clerk's correspondence submitted incorrectly. (RE: related document(s) <u>3945</u> Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit Ex. 1 # <u>2</u> Exhibit Ex. 2 # <u>3</u> Exhibit Ex. 3 # <u>4</u> Exhibit Ex. 4 # <u>5</u> Exhibit Ex. 5 # <u>6</u> Exhibit Ex. 5a # <u>7</u> Exhibit Ex. 6 # <u>8</u> Exhibit Ex. 7 # <u>9</u> Exhibit Ex. 8 # <u>10</u> Exhibit Ex. 9)) Responses due by 10/23/2023. (Whitaker, Sheniqua) Modified on 10/20/2023 (Whitaker, Sheniqua).

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10/20/2023	<u>3949</u> Clerk's correspondence requesting to refile document from attorney for appellant. (RE: related document(s) <u>3946</u> INCORRECT ENTRY. Incorrect event code. Statement of issues on appeal, and <i>Designation of Items for Inclusion in the Appellate Record</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal, <u>3945</u> Amended notice of appeal). (McEntire, Sawnie) Modified on 10/20/2023 .) Responses due by 10/23/2023. (Whitaker, Sheniqua)
10/20/2023	<u>3950</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. <i>Supplemental</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal, <u>3908</u> Amended notice of appeal, <u>3945</u> Amended notice of appeal). Appellee designation due by 11/3/2023. (McEntire, Sawnie)
10/23/2023	<u>3951</u> Amended Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. <i>Second Supplemental</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal, <u>3908</u> Amended notice of appeal, <u>3945</u> Amended notice of appeal). Appellee designation due by 11/6/2023. (McEntire, Sawnie) Modified TEXT on 10/24/2023 (Blanco, J.).
10/23/2023	<u>3952</u> Notice of Appearance and Request for Notice by James Jay Lee filed by Interested Parties The Pettit Law Firm, Lynn Pinker Hurst & Schwegmann, LLP. (Lee, James)
10/23/2023	<u>3953</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 09/30/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit Global Notes to Post-Confirmation Report) (Annable, Zachery)
10/23/2023	<u>3954</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 09/30/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Exhibit Global Notes to Post-Confirmation Report) (Annable, Zachery)
10/23/2023	<u>3955</u> Amended Chapter 11 Post-Confirmation Report for the Quarter Ending: 09/30/2023 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3953</u> Chapter 11 Post-Confirmation Report). (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
10/23/2023	<u>3956</u> Amended Chapter 11 Post-Confirmation Report for the Quarter Ending: 09/30/2023 filed by Other Professional Highland Claimant Trust (RE: related document(s) <u>3954</u> Chapter 11 Post-Confirmation Report). (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
10/24/2023	<u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) and <i>Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders</i> Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (Attachments: # <u>1</u> Exhibit 1 – Proposed Order # <u>2</u> Exhibit A – Declaration of Julie Pettit # <u>3</u> Exhibit B – Declaration of Michael K. Hurst) (Lee, James)
10/24/2023	<u>3958</u> Response opposed to (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) filed by Creditor Scott Ellington. (Hartmann, Margaret)
10/24/2023	<u>3959</u> Declaration re: <i>Ellington's Response in Opposition to the Joint Motion of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr. for an Order Requiring Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil</i>

	<i>Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders</i> filed by Creditor Scott Ellington (RE: related document(s) <a href="#">3958</a> Response). (Attachments: # <a href="#">1</a> Exhibit 2 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4) (Hartmann, Margaret)
10/25/2023	<a href="#">3960</a> Support/supplemental document <i>Notice of Filing Exhibit "1" to Declaration of Michelle Hartmann in Support of Ellington's Response in Opposition to the Joint Motion of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr. for an Order Requiring Ellington and His Counsel to Show Cause Why They Should Not Be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders</i> filed by Creditor Scott Ellington (RE: related document(s) <a href="#">3959</a> Declaration). (Hartmann, Margaret)
10/30/2023	<a href="#">3961</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3910</a> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 12/4/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">3910</a> , (Annable, Zachery)
10/31/2023	<a href="#">3962</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3819</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/01/2023	<a href="#">3963</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3962</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3819</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/4/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">3962</a> , (Annable, Zachery)
11/07/2023	<a href="#">3964</a> Joint <i>Notice of Mediation Report</i> filed by Interested Party James Dondero, Get Good Trust, Hunter Mountain Investment Trust, Strand Advisors, Inc., The Dugaboy Investment Trust (RE: related document(s) <a href="#">3897</a> Order granting in part, denying in part motion to stay and to compel mediation (related document <a href="#">3752</a> ) Entered on 8/2/2023.). (Attachments: # <a href="#">1</a> Exhibit A) (Deutsch-Perez, Deborah)
11/08/2023	<a href="#">3965</a> Certificate of service re: Notice of Hearing re: Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Joint Motion for an Order Requiring Scott Byron Ellington and His Counsel to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">3961</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">3910</a> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders Filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 12/4/2023 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">3910</a> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/08/2023	<a href="#">3966</a> Certificate of service re: Reorganized Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">3962</a> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <a href="#">3819</a> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

11/08/2023	<u>3967</u> Certificate of service re: Notice of Hearing re: Reorganized Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3963</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3962</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3819</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/4/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3962</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/09/2023	<u>3968</u> Certificate of service re: Motion and Notice filed by Creditor James P. Seery Jr. (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, <u>3961</u> Notice of hearing). (Robin, Lindsey)
11/10/2023	<u>3969</u> Reply to (related document(s): <u>3958</u> Response filed by Creditor Scott Ellington) ( <i>Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Reply in Further Support of Their Joint Motion for Civil Contempt and in Opposition to Ellingtons Counsels Motion to Strike</i> ) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr.. (Stancil, Mark)
11/15/2023	<u>3970</u> Notice of hearing filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm (RE: related document(s) <u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) <i>and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders</i> Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (Attachments: # 1 Exhibit 1 – Proposed Order # 2 Exhibit A – Declaration of Julie Pettit # 3 Exhibit B – Declaration of Michael K. Hurst)). Hearing to be held on 12/4/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3957</u> , (Lee, James)
11/16/2023	<u>3971</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/24/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3851</u> , (Annable, Zachery)
11/22/2023	<u>3972</u> Notice ( <i>Highland Capital Management, L.P.'s Notice of Intent to Lift the Stay for Purpose of Prosecuting Claim Objection</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3736</u> Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s) <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023). (Annable, Zachery)
11/27/2023	<u>3973</u> Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3962</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3819</u> Order on motion to extend/shorten time)). (Annable, Zachery)
11/27/2023	<u>3974</u> Joinder by filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.) (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, <u>3969</u>

	Reply). (Hersh, Susan)
11/28/2023	<u>3975</u> Joinder by <i>Patrick Daugherty</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, <u>3969</u> Reply). (Attachments: # <u>1</u> Exhibit A) (Brookner, Jason)
11/30/2023	<u>3976</u> Witness and Exhibit List for <i>December 4, 2023 Hearing Wherein Movants' Seek an Order to Show Cause</i> filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders, <u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit A-1 # <u>3</u> Exhibit A-2 # <u>4</u> Exhibit A-3 # <u>5</u> Exhibit A-4 # <u>6</u> Exhibit A-5 # <u>7</u> Exhibit A-6 # <u>8</u> Exhibit A-7 # <u>9</u> Exhibit A-8 # <u>10</u> Exhibit A-9 # <u>11</u> Exhibit A-10 # <u>12</u> Exhibit A-11 # <u>13</u> Exhibit A-12 # <u>14</u> Exhibit B) (Lee, James)
11/30/2023	<u>3977</u> Witness and Exhibit List ( <i>Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Witness and Exhibit List with Respect to Hearing to Be Held on December 4, 2023</i> ) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39) (Annable, Zachery)
11/30/2023	<u>3978</u> Witness and Exhibit List <i>Ellington's Witness and Exhibit List for the hearing scheduled on December 4, 2023</i> filed by Creditor Scott Ellington (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # <u>1</u> Exhibit SE-1 # <u>2</u> Exhibit SE-2 # <u>3</u> Exhibit SE-3 # <u>4</u> Exhibit SE-4 # <u>5</u> Exhibit SE-5 # <u>6</u> Exhibit SE-6 # <u>7</u> Exhibit SE-7 # <u>8</u> Exhibit SE-8 # <u>9</u> Exhibit SE-9 # <u>10</u> Exhibit SE-10) (Hartmann, Margaret)
12/01/2023	<u>3979</u> Objection to (related document(s): <u>3975</u> Joinder filed by Creditor Patrick Daugherty. Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm. (Lee, James) Modified to correct linkage on 12/4/2023 (Ecker, C.).
12/01/2023	<u>3980</u> Joinder by <i>Scott Ellington in Lynn Pinker Hurst &amp; Schwegmann, LLP and The Pettit Law Firm's Objection to the Joinder of Patrick Daugherty</i> filed by Creditor Scott Ellington (RE: related document(s) <u>3979</u> Objection). (Hartmann, Margaret)
12/04/2023	<u>3981</u> Motion for leave to <i>File Adversary Complaint</i> Filed by Interested Party James Dondero, Creditor Strand Advisors, Inc. (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Proposed Order Proposed Order) (Ruhland, Amy)
12/04/2023	<u>3983</u> Court admitted exhibits date of hearing December 4, 2023 (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # <u>1</u> Exhibit A – Proposed Order), <u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel

	<p>regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders filed by Interested Parties Lynn Pinker Hurst &amp; Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (The Court Admitted All Exhibits that Appear at Doc. #3976, #3977 &amp; #3978 Announced in Court) (Edmond, Michael) (Entered: 12/05/2023)</p>
12/04/2023	<p>3985 Hearing held on 12/4/2023. (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A – Proposed Order), (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.) (Edmond, Michael) (Entered: 12/06/2023)</p>
12/04/2023	<p>3986 Hearing held on 12/4/2023. (RE: related document(s) <u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Interested Parties Lynn Pinker Hurst &amp; Schwegmann, LLP, The Pettit Law Firm, (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.) (Edmond, Michael) (Entered: 12/06/2023)</p>
12/05/2023	<p><u>3984</u> Request for transcript regarding a hearing held on 12/4/2023. The requested turn-around time is hourly. (Edmond, Michael)</p>
12/06/2023	<p><u>3987</u> Transcript regarding Hearing Held 12/04/2023 Before Judge Stacey G.C. Jernigan (101 Pages) RE: Motion for Order to Show Cause, Motion to Strike. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/5/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 3985 Hearing held on 12/4/2023. (RE: related document(s) <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (Attachments: # 1 Exhibit A – Proposed Order), (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.), 3986 Hearing held on 12/4/2023. (RE: related document(s) <u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other</p>

	Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm, (Appearances: J. Morris and H. Winograd for Debtor; J. Levy and M. Stancil for J. Seery; M. Hartman and D. Dandeneau for S. Ellington; R. Wynne and S. Hersch for R. Nelms and J. Dubel; J. Lee and M. Lee for State Court Lawyers; L. Lambert for U.S. Trustee. Evidentiary hearing (documents admitted; no live witness testimony). Parties reached agreed resolution of this matter during break of hearing. Agreed Order will be electronically submitted.)). Transcript to be made available to the public on 03/5/2024. (Rehling, Kathy)
12/07/2023	<u>3988</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 42 . Civil Case Number: 3:23-CV-2071-E (RE: related document(s) <u>3906</u> Notice of appeal <u>3908</u> Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust <u>3945</u> Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust ) (Blanco, J.)
12/07/2023	<u>3989</u> Notice of docketing COMPLETE record on appeal. 3:23-CV-02071-E (RE: related document(s) <u>3906</u> Notice of appeal <u>3908</u> Amended notice of appeal <u>3945</u> Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # 1 Exhibit Ex. ) (Blanco, J.)
12/08/2023	<u>3990</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. <u>3962</u> Motion to extend time.) Entered on 12/8/2023. (Okafor, Marcey)
12/12/2023	<u>3991</u> Order Denying Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders (related document # <u>3910</u> ) Entered on 12/12/2023. (Okafor, Marcey)
12/18/2023	<u>3993</u> Notice of Transmittal to correct and attach Mini Record to DC docket 23-CV-02071-E (RE: related document(s) <u>3989</u> Notice of docketing COMPLETE record on appeal. 3:23-CV-02071-E (RE: related document(s) <u>3906</u> Notice of appeal <u>3908</u> Amended notice of appeal <u>3945</u> Second Amended notice of appeal filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>3906</u> Notice of appeal). (Attachments: # 1 Exhibit Ex. ) (Blanco, J.)). (Blanco, J.)
12/18/2023	<u>3994</u> Certificate of service re: re: Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3990</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 USC Section 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related doc. <u>3962</u> Motion to extend time.) Entered on 12/8/2023.). (Kass, Albert)
12/22/2023	<u>3995</u> Response opposed to (related document(s): <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Gameros, Charles)
12/26/2023	<u>3996</u> Response opposed to (related document(s): <u>3981</u> Motion for leave to <i>File Adversary Complaint</i> filed by Interested Party James Dondero, Creditor Strand Advisors, Inc.) filed by Attorney Pachulski Stang Ziehl & Jones LLP. (Annable, Zachery)
12/26/2023	

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	<u>3997</u> Amended Response opposed to (related document(s): <u>3981</u> Motion for leave to File Adversary Complaint filed by Interested Party James Dondero, Creditor Strand Advisors, Inc.) filed by Attorney Pachulski Stang Ziehl & Jones LLP. (Annable, Zachery)
12/26/2023	<u>3998</u> Declaration re: ( <i>Declaration of Hayley R. Winograd in Support of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint</i> ) filed by Attorney Pachulski Stang Ziehl & Jones LLP (RE: related document(s) <u>3997</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11) (Annable, Zachery)
12/27/2023	<u>3999</u> Clerk's correspondence requesting an order (RE: related document(s) <u>3957</u> Motion to strike (related document(s): <u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust) and Response Subject Thereto Opposing the Movants' Motion Requesting an Order Requiring Lynn Pinker and Pettit to Show Cause Why They Should Not be Held in Civil Contempt for Violating the Gatekeeper Provision and Gatekeeper Orders Filed by Interested Parties Lynn Pinker Hurst & Schwegmann, LLP, The Pettit Law Firm Objections due by 11/10/2023. (Attachments: # 1 Exhibit 1 – Proposed Order # 2 Exhibit A – Declaration of Julie Pettit # 3 Exhibit B – Declaration of Michael K. Hurst)) Responses due by 1/3/2024. (Ecker, C.)
01/01/2024	<u>4000</u> Motion for leave to File a Delaware Complaint Filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Attachments: # <u>1</u> Exhibit 1) (Deutsch–Perez, Deborah)
01/01/2024	<u>4001</u> Support/supplemental document Appendix in Support of Motion for Leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4000</u> Motion for leave to File a Delaware Complaint). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16) (Deutsch–Perez, Deborah)
01/05/2024	<u>4002</u> Order denying as moot (document # <u>3957</u> ) motion to strike. Entered on 1/5/2024. (Okafor, Marcey)
01/06/2024	<u>4003</u> Certificate of service re: re: Highland Capital Management, L.P.s Notice of Intent to Lift the Stay for the Purpose of Prosecuting Claim Objection Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3972</u> Notice ( <i>Highland Capital Management, L.P.'s Notice of Intent to Lift the Stay for Purpose of Prosecuting Claim Objection</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3736</u> Order approving Stipulation staying contested matter concerning Highland Capital Management L.P.'s objection to schedule claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s) <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Entered on 4/13/2023). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/09/2024	<u>4005</u> Notice of Transmittal of Appellant Record for the 5th Circuit Court of Appeals, 23–10911. District Court docket entires 176–180 in 3:21–CV–00881–X . 233 Appellant Volumes. (Blanco, J.)
01/15/2024	<u>4006</u> Certificate of service re: 1) PSZJs Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint; 2) Declaration of Hayley R. Winograd in Support of PSZJs Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>3997</u> Amended Response opposed to (related document(s): <u>3981</u> Motion for leave to File Adversary Complaint filed by Interested Party James Dondero, Creditor Strand Advisors, Inc.) filed by Attorney

	<p>Pachulski Stang Ziehl &amp; Jones LLP. filed by Attorney Pachulski Stang Ziehl &amp; Jones LLP, <u>3998</u> Declaration re: (<i>Declaration of Hayley R. Winograd in Support of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint</i>) filed by Attorney Pachulski Stang Ziehl &amp; Jones LLP (RE: related document(s)<u>3997</u> Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11) filed by Attorney Pachulski Stang Ziehl &amp; Jones LLP). (Kass, Albert)</p>
01/15/2024	<p><u>4007</u> Certificate of service re: 1) Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust; 2) Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3872</u> Notice (<i>Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust</i>) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)<u>3870</u> Order granting motion to continue hearing on (related document <u>3868</u>) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i>) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u>, Entered on 7/5/2023.). filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, <u>3873</u> Notice (<i>Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties</i>) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)<u>3870</u> Order granting motion to continue hearing on (related document <u>3868</u>) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i>) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u>, Entered on 7/5/2023.). filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)</p>
01/15/2024	<p><u>4008</u> Certificate of service re: 1) Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates; 2) Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3878</u> Notice (<i>Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against James Dondero and Certain Affiliates</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>3879</u> Notice (<i>Notice of Filing of Order Adopting Report and Recommendation and Final Judgment Against NexPoint Asset Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2024	<p><u>4009</u> Certificate of service re: Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3880</u> Amended Notice (<i>Amended Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties</i>) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)<u>3873</u> Notice (<i>Notice of Filing of List of Active Litigation Involving and/or Affecting the Highland Parties</i>) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s)<u>3870</u> Order granting motion to continue hearing on (related document <u>3868</u>) (related documents Motion to compel Mediation. <i>Motion to Stay and to Compel Mediation</i>) Hearing to be held on 7/21/2023 at 01:00 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3752</u>, Entered on 7/5/2023.).). filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)</p>
01/15/2024	<p><u>4010</u> Certificate of service re: 1) Notice of Briefing Schedule and Hearing re: Highland Capital Management, L.P.s Motion for (A) Bad Faith Finding and (B) Attorneys Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.s Witness and Exhibit List with Respect to Hearing to be Held on December 4, 2023 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>3971</u> Notice of hearing filed by Debtor Highland Capital Management, L.P.</p>

	<p>(RE: related document(s)<u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/24/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>3851</u>, filed by Debtor Highland Capital Management, L.P., <u>3977</u> Witness and Exhibit List (<i>Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Witness and Exhibit List with Respect to Hearing to Be Held on December 4, 2023</i>) filed by Debtor Highland Capital Management, L.P., Other Professionals Highland Claimant Trust, James P. Seery Jr. (RE: related document(s)<u>3910</u> Motion for contempt against Scott Byron Ellington and His Counsel regarding Violation of the Gatekeeper Provision and Gatekeeper Orders). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39) filed by Debtor Highland Capital Management, L.P., Creditor James P. Seery, Other Professional James P. Seery, Other Professional Highland Claimant Trust). (Kass, Albert)</p>
01/16/2024	<p><u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust Objections due by 2/6/2024. (Attachments: # <u>1</u> Proposed Order) (Loigman, Robert)</p>
01/16/2024	<p><u>4012</u> Declaration re: <i>Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties</i> filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust (RE: related document(s)<u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # <u>1</u> Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) (Loigman, Robert)</p>
01/16/2024	<p><u>4013</u> Motion to abate (<i>Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief</i>) (related document(s)<u>4000</u> Motion for leave to <i>File a Delaware Complaint</i>) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (Annable, Zachery)</p>
01/16/2024	<p><u>4014</u> Motion for expedited hearing(related documents <u>4013</u> Motion to abate) (<i>Highland's Emergency Motion to Expedite Hearing on Motion for Stay</i>) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (Annable, Zachery)</p>
01/16/2024	<p><u>4015</u> Withdrawal filed by Interested Party James Dondero, Creditor Strand Advisors, Inc. (RE: related document(s)<u>3981</u> Motion for leave to <i>File Adversary Complaint</i>). (Ruhland, Amy)</p>
01/17/2024	<p><u>4016</u> Notice of hearing(<i>Notice of Briefing Schedule and Hearing</i>) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust (RE: related document(s)<u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4011</u>, (Loigman, Robert)</p>

01/17/2024	<u>4017</u> Notice of hearing filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>4013</u> Motion to abate ( <i>Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief</i> ) (related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> ) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). Hearing to be held on 1/24/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4013</u> , (Annable, Zachery)
01/19/2024	<u>4018</u> Reply to (related document(s): <u>3995</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) ( <i>Highland Capital Management, L.P.'s Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/22/2024	<u>4019</u> Joinder by <i>James P. Seery, Jr.</i> filed by Other Professional James P. Seery Jr., Creditor James P. Seery Jr. (RE: related document(s) <u>4013</u> Motion to abate ( <i>Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief</i> ) (related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> )). (Levy, Joshua)
01/22/2024	<u>4020</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/2023 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
01/22/2024	<u>4021</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 12/31/2023 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
01/23/2024	<u>4022</u> Response opposed to (related document(s): <u>4013</u> Motion to abate ( <i>Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief</i> ) (related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> ) filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (Deutsch-Perez, Deborah)
01/23/2024	<u>4023</u> Amended Reply to (related document(s): <u>3995</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/24/2024	<u>4024</u> Request for transcript regarding a hearing held on 1/24/2024. The requested turn-around time is hourly (Jeng, Hawaii)
01/24/2024	<u>4025</u> PDF with attached Audio File. Court Date & Time [01/24/2024 01:33:27 PM]. File Size [ 34225 KB ]. Run Time [ 02:26:01 ]. (admin).
01/24/2024	<u>4026</u> Hearing held on 1/24/2024. (RE: related document(s) <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Appearances: All via Webex. Attendee list to be separately filed. Nonevidentiary (declaration and attachments only). Court took matter under advisement.) (Edmond, Michael)
01/24/2024	<u>4027</u> Hearing held on 1/24/2024. (RE: related document(s) <u>4013</u> Motion to abate Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) (related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) (Appearances: All appearances were via Webex. Attendee list to be separately filed on docket. Nonevidentiary hearing. Motion grantedstaying Hunter Mountain Investment Trusts

	<p>latest Motion for Leave to Sue James Seery in Delaware (Proposed Delaware Complaint) until at least after the court rules on the pending Motion to Dismiss Valuation Complaint (Valuation Complaint), which alleges the same or similar issues regarding the standing of Hunter Mountain Investment Trust. Court will hear oral arguments on the Valuation Complaint on 2/14/24 and anticipates taking such matter under advisement thereafter to prepare a written ruling. Court will further consider the stay of Proposed Delaware Complaint at a Status Conference to be set after the courts ruling on the Valuation Complaint. Mr. Morris to submit an order reflecting this ruling.) (Edmond, Michael)</p>
01/24/2024	<p><u>4028</u> Certificate of service re: 1) Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief; and 2) Highlands Emergency Motion to Expedite Hearing on Motion for Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>4013</u> Motion to abate (<i>Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief</i>) (related document(s) <u>4000</u> Motion for leave to File a Delaware Complaint) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust, <u>4014</u> Motion for expedited hearing (related documents <u>4013</u> Motion to abate) (<i>Highland's Emergency Motion to Expedite Hearing on Motion for Stay</i>) Filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust). (Kass, Albert)</p>
01/24/2024	<p><u>4029</u> Certificate of service re: 1) Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 2) Declaration of Robert S. Loigman in Support of the Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 3) Notice of Briefing Schedule and Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust, <u>4012</u> Declaration re: <i>Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties</i> filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust (RE: related document(s) <u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust, <u>4016</u> Notice of hearing (<i>Notice of Briefing Schedule and Hearing</i>) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust (RE: related document(s) <u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4011</u>, filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub-Trust). (Kass, Albert)</p>
01/24/2024	<p><u>4083</u> DISTRICT COURT Order granting motion to abate: This proceeding and all deadlines herein are ABATED pending further order of the Court. (Ordered by Judge Ada Brown on 1/24/2024) (sxf) (Entered: 01/24/2024) (RE: related document(s) <u>3685</u> Notice of docketing notice of appeal/record). Civil case 3:23-cv-00573 Entered on 1/24/2024 (Whitaker, Sheniqua) (Entered: 06/07/2024)</p>

01/25/2024	<p><u>4030</u> Transcript regarding Hearing Held 01/24/2024 Before Judge Stacey G.C. Jernigan (83 Pages) RE: Motion for Bad Faith Finding (3851) and Motion to Stay (4013). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/24/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 4026 Hearing held on 1/24/2024. (RE: related document(s) <u>3851</u> Motion for sanctions Other Reimbursement of Highland Capital Management's L.P.'s Attorneys' Fees and Expenses against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) (Appearances: All via Webex. Attendee list to be separately filed. Nonevidentiary (declaration and attachments only). Court took matter under advisement.), 4027 Hearing held on 1/24/2024. (RE: related document(s) <u>4013</u> Motion to abate Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) (related document(s) <u>4000</u> Motion for leave to File a Delaware Complaint filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust) (Appearances: All appearances were via Webex. Attendee list to be separately filed on docket. Nonevidentiary hearing. Motion grantedstaying Hunter Mountain Investment Trusts latest Motion for Leave to Sue James Seery in Delaware (Proposed Delaware Complaint)until at least after the court rules on the pending Motion to Dismiss Valuation Complaint (Valuation Complaint), which alleges the same or similar issues regarding the standing of Hunter Mountain Investment Trust. Court will hear oral arguments on the Valuation Complaint on 2/14/24 and anticipates taking such matter under advisement thereafter to prepare a written ruling. Court will further consider the stay of Proposed Delaware Complaint at a Status Conference to be set after the courts ruling on the Valuation Complaint. Mr. Morris to submit an order reflecting this ruling.)). Transcript to be made available to the public on 04/24/2024. (Rehling, Kathy)</p>
01/26/2024	<p><u>4031</u> Order granting motion for expedited hearing (Related Doc# <u>4014</u>)(document set for hearing: <u>4000</u> Motion to stay contested matter, <u>4013</u> Motion to abate) Hearing to be held on 1/24/2024 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>4013</u>, Entered on 1/26/2024. (Okafor, Marcey)</p>
01/26/2024	<p><u>4032</u> Certificate of service re: Highland Capital Management L.P.'s Reply in Further Support of its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146 Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s)<u>4018</u> Reply to (related document(s): <u>3995</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) (<i>Highland Capital Management, L.P.'s Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/31/2024	<p><u>4033</u> Order granting in part motion to stay contested matter (related document <u>4013</u>) Entered on 1/31/2024. (Okafor, Marcey). Related document(s) <u>4000</u> Motion for leave to File a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust. Modified to add linkage on 2/20/2024 (Ecker, C.).</p>
02/06/2024	<p><u>4034</u> Certificate of service re: 1) Litigation Trustee's Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 2) Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; and 3) Notice of Briefing Schedule and Hearing (<i>Amended</i>) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>4011</u> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21-03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the</p>

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	<p>Litigation Trustee of the Highland Litigation Sub–Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust, <a href="#">4012</a> Declaration re: <i>Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties</i> filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust (RE: related document(s)<a href="#">4011</a> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21–03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust, <a href="#">4016</a> Notice of hearing(<i>Notice of Briefing Schedule and Hearing</i>) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust (RE: related document(s)<a href="#">4011</a> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21–03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">4011</a>, filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust, <a href="#">4029</a> Certificate of service re: 1) Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 2) Declaration of Robert S. Loigman in Support of the Litigation Trustees Motion for Entry of an Order Approving Settlement with the Okada Parties and Authorizing Actions Consistent Therewith; 3) Notice of Briefing Schedule and Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">4011</a> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21–03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust, <a href="#">4012</a> Declaration re: <i>Declaration of Robert S. Loigman in Support of the Litigation Trustee's Motion to Compromise Controversy with the Okada Parties</i> filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust (RE: related document(s)<a href="#">4011</a> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21–03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Ton). (Attachments: # 1 Exhibit 1: Okada Highland Settlement Agreement (Fully Executed)) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust, <a href="#">4016</a> Notice of hearing(<i>Notice of Briefing Schedule and Hearing</i>) filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust (RE: related document(s)<a href="#">4011</a> Motion to compromise controversy with Okada Parties. Related AP case numbers: 21–03076. Related defendants: Mark K. Okada, Mark &amp; Pamela Okada Family Trust Exempt Trust #1, Mark &amp; Pamela Okada Family Trust Exempt Trust #2, and Lawrence Tonomura in his capacity as Trustee. Filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust Objections due by 2/6/2024. (Attachments: # 1 Proposed Order)). Hearing to be held on 2/14/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <a href="#">4011</a>, filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
02/07/2024	<p><a href="#">4035</a> Certificate of no objection filed by Interested Party Marc S. Kirschner, the Litigation Trustee of the Highland Litigation Sub–Trust. (Loigman, Robert)</p>
02/08/2024	<p><a href="#">4036</a> Order granting The Litigation Trustee's motion to compromise controversy with the Okada Parties. Related AP case numbers: 21–03076. (related document # <a href="#">4011</a>) Entered on 2/8/2024. (Okafor, Marcey)</p>

03/03/2024	<u>4037</u> (Hersh, Susan) has withdrawn from the case filed by Interested Parties John S. Dubel, Hon.Russell F. Nelms (Ret.). (Hersh, Susan)
03/05/2024	<u>4038</u> Memorandum of opinion and order granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146 (RE: related document(s) <u>3851</u> Motion for sanctions filed by Debtor Highland Capital Management, L.P.). Entered on 3/5/2024 (Okafor, Marcey)
03/05/2024	<u>4039</u> Order granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146 (related document # <u>3851</u> ) Entered on 3/5/2024. (Okafor, Marcey)
03/18/2024	<u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # <u>1</u> Proposed Order) (Ruhland, Amy)
03/18/2024	<u>4041</u> Brief in support filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Ruhland, Amy)
03/18/2024	<u>4042</u> Notice of appeal . Fee Amount \$298 filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4038</u> Memorandum of opinion). Appellant Designation due within 14 days of entering the Bankruptcy Court's order on the motion to reconsider. (Ruhland, Amy) MODIFIED text on 03/20/2024 (Whitaker, Sheniqua).
03/18/2024	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A31245002, amount \$ 298.00 (re: Doc# <u>4042</u> ). (U.S. Treasury)
03/20/2024	<u>4043</u> Certificate of mailing regarding appeal (RE: related document(s) <u>4042</u> Notice of appeal . filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4038</u> Memorandum of opinion). Appellant Designation due within 14 days of the Bankruptcy Court's order on the motion to reconsider.) (Whitaker, Sheniqua)
03/20/2024	<u>4044</u> Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4042</u> Notice of appeal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(Ruhland, Amy)
04/02/2024	<u>4046</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC). filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion)). (Annable, Zachery)
04/09/2024	<u>4047</u> Certificate of service re: Stipulation Regarding Briefing Schedule [Docket No. 4040] Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>4046</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC). filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2024	<u>4048</u> Motion to withdraw as attorney (Leah McCallister Ray) Filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
04/20/2024	

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	<u>4049</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 03/31/2024 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
04/20/2024	<u>4050</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 03/31/2024 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
04/22/2024	<u>4051</u> Order granting motion to withdraw as attorney (attorney Leah M. "Calli" Ray terminated). (related document # <u>4048</u> ) Entered on 4/22/2024. (Okafor, Marcey)
04/22/2024	<u>4052</u> Response opposed to (related document(s): <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/29/2024	<u>4053</u> Certificate of service re: <i>Highlands Opposition to Motion for Relief from Order</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>4052</u> Response opposed to (related document(s): <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2024	<u>4054</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order)). Hearing to be held on 5/16/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4040</u> , (Annable, Zachery)
05/01/2024	<u>4055</u> Reply to (related document(s): <u>4052</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # <u>1</u> Exhibit E # <u>2</u> Exhibit F) (Ruhland, Amy)
05/03/2024	<u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/03/2024	<u>4057</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4056</u> , (Annable, Zachery)
05/06/2024	<u>4058</u> Certificate of service re: <i>Notice of Hearing on Motion for Relief from Order</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>4054</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order)). Hearing to be held on 5/16/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4040</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/06/2024	<u>4063</u> DISTRICT COURT order from Judge Starr, re: appeal on Civil Action number:3:21-cv-01974-X, REMANDED to the Bankruptcy Court (RE: related document(s) <u>3660</u> Order (generic)). Entered on 5/6/2024 (Whitaker, Sheniqua) (Entered: 05/13/2024)

05/07/2024	<u>4059</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>4056</u> , (Annable, Zachery)
05/09/2024	<u>4060</u> Certificate of service re: 1) <i>Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> ; and 2) <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>4057</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4056</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/10/2024	<u>4061</u> Certificate of service re: <i>Amended Notice of Hearing on Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC (related document(s) <u>4059</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/5/2024 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>4056</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2024	<u>4062</u> Notice of hearing filed by Creditor Acis Capital Management GP, LLC (RE: related document(s) <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>3695</u> , (Ahmad, Joseph)
05/14/2024	<u>4064</u> Amended Notice of hearing filed by Creditor Acis Capital Management GP, LLC (RE: related document(s) <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>3695</u> , (Ahmad, Joseph)
05/14/2024	<u>4065</u> NOTICE OF CHANGE IN JUDGE JERNIGAN'S WEBEX ACCESS CODE PER CLERK'S NOTICE 24-01, (RE: related document(s) <u>4054</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4040</u> Motion to Reconsider(related documents <u>4038</u> Memorandum of opinion) Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # 1 Proposed Order)). Hearing to be held on 5/16/2024 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4040</u> ). NOTE: THE NEW WEBEX ACCESS CODE FOR JUDGE JERNIGAN'S VIRTUAL COURTROOM IS 2304-154-2638. (Ellison, Traci)
05/15/2024	<u>4066</u> Notice of Updated Access to Webex Hearings (Ellison, Traci)
05/16/2024	<u>4067</u> Hearing held on 5/16/2024. (RE: related document(s) <u>4040</u> Motion to Reconsider (related documents <u>4038</u> Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Appearances: A. Ruhland and W. Carvell for movant; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court took matter under advisement and hopes to rule in next few days). (Edmond, Michael)

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05/17/2024	<u>4068</u> PDF with attached Audio File. Court Date & Time [05/16/2024 09:15:47 AM]. File Size [ 26034 KB ]. Run Time [ 01:51:04 ]. (admin).
05/21/2024	<u>4069</u> Order denying motion of NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) seeking relief from Order (related document # <u>4040</u> ) Entered on 5/21/2024. (Okafor, Marcey)
05/21/2024	<u>4070</u> Order in Response to District Court's and Fifth Circuit's Remand Regarding Bankruptcy Court's August 4, 2021 Sanction Order (RE: related document(s) <u>4063</u> Order from District court re: appeal). Entered on 5/21/2024 (Okafor, Marcey)
05/23/2024	<u>4071</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>4070</u> Order in Response to District Court's and Fifth Circuit's Remand Regarding Bankruptcy Court's August 4, 2021 Sanction Order (RE: related document(s) <u>4063</u> Order from District court re: appeal). Entered on 5/21/2024) No. of Notices: 2. Notice Date 05/23/2024. (Admin.)
05/29/2024	<u>4072</u> Certificate of no objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4056</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>3990</u> Order on motion to extend/shorten time)). (Annable, Zachery)
06/03/2024	<u>4073</u> Order further <u>4056</u> extending period within which the Reorganized Debtor may Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 6/3/2024. (Okafor, Marcey)
06/04/2024	<u>4074</u> Second Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4042</u> Notice of appeal). (Ruhland, Amy)
06/04/2024	<u>4075</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4074</u> Amended notice of appeal). Appellee designation due by 06/18/2024. (Ruhland, Amy)
06/05/2024	<u>4076</u> Request for transcript regarding a hearing held on 5/16/2024. The requested turn-around time is 3-day expedited (Jeng, Hawaii)
06/06/2024	<u>4077</u> Clerk's correspondence requesting Status of Motion from attorney for creditor. (RE: related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> Filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Attachments: # 1 Exhibit 1)) Responses due by 6/13/2024. (Ecker, C.)
06/07/2024	<u>4078</u> Stipulation by Highland Capital Management, L.P. and Highland CLO Management, Ltd. and Acis Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3657</u> Objection to claim, <u>3695</u> Motion to intervene <i>and Brief in Support</i> ). (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
06/07/2024	<u>4080</u> Objection to (related document(s): <u>3695</u> Motion to intervene <i>and Brief in Support</i> filed by Creditor Acis Capital Management, L.P.) filed by Interested Party Highland CLO Management Ltd. (Deitsch–Perez, Deborah)
06/07/2024	<u>4081</u> Support/supplemental document <i>Appendix in Support of Objection to Motion to Intervene</i> filed by Interested Party Highland CLO Management Ltd (RE: related document(s) <u>3695</u> Motion to intervene <i>and Brief in Support</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11) (Deitsch–Perez, Deborah)

06/07/2024	<u>4082</u> Notice of hearing <i>Status Conference</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> Filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Attachments: # 1 Exhibit 1)). Status Conference to be held on 6/12/2024 at 10:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Attachments: # <u>1</u> Exhibit 1) (Deutsch-Perez, Deborah)
06/10/2024	<u>4084</u> Transcript regarding Hearing Held 05/16/2024 Before Judge Stacey G.C. Jernigan (58 Pages) RE: Motion for Relief from Order <u>4040</u> . THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/9/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, <a href="mailto:kathyrehlingtranscripts@gmail.com">kathyrehlingtranscripts@gmail.com</a> , Telephone number 972-786-3063. (RE: related document(s) <u>4067</u> Hearing held on 5/16/2024. (RE: related document(s) <u>4040</u> Motion to Reconsider (related documents <u>4038</u> Memorandum of opinion) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Appearances: A. Ruhland and W. Carvell for movant; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Court took matter under advisement and hopes to rule in next few days).). Transcript to be made available to the public on 09/9/2024. (Rehling, Kathy)
06/10/2024	<u>4085</u> INCORRECT ENTRY: Notice of <i>Supplemental Authority</i> filed by Farallon Capital Management, LLC, Jessup Holdings LLC, Muck Holdings LLC, James P. Seery Jr., Stonehill Capital Management LLC, Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust. (Robin, Lindsey) Modified on 6/11/2024 (Ecker, C.).
06/11/2024	<u>4086</u> Order approving stipulation concerning the litigation of HCMLP's objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s) <u>3657</u> Stipulation and <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>3695</u> , Entered on 6/11/2024 (Okafor, Marcey)
06/11/2024	<u>4087</u> Support/supplemental document <i>Supplement to Response to Motion to Stay [Dkt 4022]</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4000</u> Motion for leave to <i>File a Delaware Complaint</i> ). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Deutsch-Perez, Deborah). Related document(s) <u>4022</u> Response filed by Creditor Hunter Mountain Investment Trust. Modified linkage on 6/12/2024 (Ecker, C.).
06/12/2024	<u>4088</u> Request for transcript regarding a hearing held on 6/12/2024. The requested turn-around time is daily. (Edmond, Michael)
06/12/2024	<u>4089</u> Hearing held on 6/12/2024. (RE: related document(s) <u>4000</u> Motion for leave to file a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Appearances: D. Deutsch-Perez and M. Aigen for HMIT; J. Morris for Reorganized Debtor; M. Stancil J. Levy for J. Seery. Nonevidentiary hearing. Court heard arguments regarding whether HMIT's motion for leave to file Delaware action against J. Seery should remain subject to a stay, pending HMIT's appeals of orders on other HMIT motions seeking leave to file actions since all matters involve standing of HMIT. Court ruled stay should remain in effect pending resolution of all appeals regarding HMIT's standing. Counsel to upload order.) (Edmond, Michael)
06/12/2024	<u>4090</u> Certificate of service re: <i>Order Further Extending Period Within Which the Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>4073</u> Order further <u>4056</u> extending period within which the Reorganized Debtor may Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 6/3/2024.). (Kass, Albert)
06/13/2024	

	<p><u>4091</u> Transcript regarding Hearing Held 06/12/2024 Before Judge Stacey G.C. Jernigan (48 Pages) RE: Status Conference re Highland's Motion to Stay Contested Matter. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/11/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 4089 Hearing held on 6/12/2024. (RE: related document(s) <u>4000</u> Motion for leave to file a Delaware Complaint filed by Creditor Hunter Mountain Investment Trust Objections due by 1/22/2024. (Appearances: D. Deitsch-Perez and M. Aigen for HMIT; J. Morris for Reorganized Debtor; M. Stancil J. Levy for J. Seery. Nonevidentiary hearing. Court heard arguments regarding whether HMITs motion for leave to file Delaware action against J. Seery should remain subject to a stay, pending HMITs appeals of orders on other HMIT motions seeking leave to file actions since all matters involve standing of HMIT. Court ruled stay should remain in effect pending resolution of all appeals regarding HMITs standing. Counsel to upload order.)). Transcript to be made available to the public on 09/11/2024. (Rehling, Kathy)</p>
06/13/2024	<p><u>4094</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>4086</u> Order approving stipulation concerning the litigation of HCMLP's objection to scheduled claims 3.65 and 3.66 of Highland CLO Management, LTD and related matters (RE: related document(s) <u>3657</u> Stipulation and <u>3695</u> Motion to intervene filed by Creditor Acis Capital Management, L.P.). Hearing to be held on 7/10/2024 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>3695</u>, Entered on 6/11/2024) No. of Notices: 1. Notice Date 06/13/2024. (Admin.)</p>
06/14/2024	<p><u>4095</u> Certificate of mailing regarding appeal (RE: related document(s) <u>4074</u> Second Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4042</u> Notice of appeal.)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)</p>
06/14/2024	<p><u>4096</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>4074</u> Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. MODIFIED linkage 6/14/2024 (Whitaker, Sheniqua).</p>
06/14/2024	<p><u>4099</u> Notice of docketing notice of appeal. Civil Action Number: 3:24-cv-01479-S. (RE: related document(s) <u>4074</u> Second Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4042</u> Notice of appeal.)) (Whitaker, Sheniqua) (Entered: 06/18/2024)</p>
06/16/2024	<p><u>4097</u> BNC certificate of mailing. (RE: related document(s) <u>4096</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>4074</u> Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. MODIFIED linkage 6/14/2024 .) No. of Notices: 1. Notice Date 06/16/2024. (Admin.)</p>
06/17/2024	<p><u>4098</u> PDF with attached Audio File. Court Date &amp; Time [06/12/2024 10:01:45 AM]. File Size [ 18047 KB ]. Run Time [ 01:16:59 ]. (admin).</p>
06/19/2024	<p><u>4100</u> Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Litigation Chart) (Annable, Zachery)</p>
06/20/2024	<p><u>4101</u> Statement of issues on appeal, <i>and Amended Designation of Record on Appeal</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4038</u> Memorandum of opinion, <u>4039</u> Order on motion for sanctions, <u>4069</u> Order on motion to reconsider). (Ruhland, Amy)</p>
06/21/2024	

	<u>4102</u> Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s) <u>4100</u> Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Litigation Chart)). Hearing to be held on 7/29/2024 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4100</u> , (Annable, Zachery)
06/24/2024	<u>4103</u> Stipulation by Highland Capital Management, L.P. and The Charitable DAF Fund LP; CLO Holdco Ltd.; Sbaiti & Company PLLC; Mazin Sbaiti; Jonathan Bridges; Mark Patrick; and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2660</u> Memorandum of opinion, <u>4070</u> Order (generic)). (Annable, Zachery)
06/24/2024	<u>4104</u> Order extending stay of Contested Matter (related document # <u>4000</u> and <u>4013</u> Motion to abate (Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief) Entered on 6/24/2024. (Okafor, Marcey)
06/26/2024	<u>4105</u> Clerk's correspondence requesting submit items for appeal from attorney for appellant. (RE: related document(s) <u>4101</u> Statement of issues on appeal, <i>and Amended Designation of Record on Appeal</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4038</u> Memorandum of opinion, <u>4039</u> Order on motion for sanctions, <u>4069</u> Order on motion to reconsider.) Responses due by 6/26/2024. (Blanco, J.)
06/26/2024	<u>4106</u> Clerk's correspondence requesting request items for appeal record from attorney for appellant. (RE: related document(s) <u>4101</u> Statement of issues on appeal, <i>and Amended Designation of Record on Appeal</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4038</u> Memorandum of opinion, <u>4039</u> Order on motion for sanctions, <u>4069</u> Order on motion to reconsider.) Responses due by 6/28/2024. (Blanco, J.)
06/27/2024	<u>4107</u> Order approving stipulation finally resolving all litigation concerning a prior contempt order dkt, <u>2660</u> and related proceedings (RE: related document(s) <u>4103</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/27/2024 (Okafor, Marcey)
06/27/2024	<u>4142</u> DISTRICT COURT Opinion from circuit court re: appeal on appellate case number: 23-10660 _____, AFFIRMED (RE: related document(s) <u>3475</u> Notice of appeal filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/27/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)
06/27/2024	<u>4143</u> DISTRICT COURT Judgment from circuit court re: appeal on appellate case number: 23-10660 _____, AFFIRMED (RE: related document(s) <u>3475</u> Notice of appeal filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/27/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)
06/28/2024	<u>4108</u> Reply to (related document(s): <u>4080</u> Objection filed by Interested Party Highland CLO Management Ltd) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Ahmad, Joseph)
06/28/2024	<u>4140</u> DISTRICT COURT Memorandum Opinion and Order from District court Judge Lindsay, re: appeal on Civil Action number:3:22-cv-00335, AFFIRMED (RE: related document(s) <u>3180</u> Order regarding objection). Entered on 6/28/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)
06/28/2024	<u>4141</u> DISTRICT COURT Judgment from Judge Lindsay, re: appeal on Civil Action number:3:22-cv-00335-L, AFFIRMED (RE: related document(s) <u>3180</u> Order regarding objection). Entered on 6/28/2024 (Whitaker, Sheniqua) (Entered: 07/25/2024)

07/01/2024	<u>4109</u> Amended Motion to (RE: related document(s) <u>4100</u> Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
07/01/2024	<u>4110</u> Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s) <u>4109</u> Amended Motion to (RE: related document(s) <u>4100</u> Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C)). Hearing to be held on 7/29/2024 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4109</u> , (Annable, Zachery)
07/08/2024	<u>4111</u> Notice of appeal . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4104</u> Order on motion for leave). Appellant Designation due by 07/22/2024. (Attachments: # <u>1</u> Exhibit A)(Deutsch-Perez, Deborah)
07/08/2024	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A31573187, amount \$ 298.00 (re: Doc# <u>4111</u> ). (U.S. Treasury)
07/08/2024	<u>4112</u> Certificate of service re: <i>Highland Claimant Trusts Motion for an Order Extending Duration of Trust</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s) <u>4100</u> Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Litigation Chart) filed by Other Professional Highland Claimant Trust). (Kass, Albert)
07/08/2024	<u>4113</u> Certificate of service re: <i>Notice of Hearing on Highland Claimant Trusts Motion for an Order Extending Duration of Trust</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s) <u>4102</u> Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s) <u>4100</u> Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) Filed by Other Professional Highland Claimant Trust (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Litigation Chart)). Hearing to be held on 7/29/2024 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4100</u> , filed by Other Professional Highland Claimant Trust). (Kass, Albert)
07/08/2024	<u>4114</u> Certificate of service re: <i>Stipulation Finally Resolving All Litigation Concerning a Prior Contempt Order and Related Proceedings</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s) <u>4103</u> Stipulation by Highland Capital Management, L.P. and The Charitable DAF Fund LP; CLO Holdco Ltd.; Sbaiti & Company PLLC; Mazin Sbaiti; Jonathan Bridges; Mark Patrick; and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2660</u> Memorandum of opinion, <u>4070</u> Order (generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2024	<u>4115</u> Notice of appeal . Fee Amount \$298 filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4104</u> Order on motion for leave). Appellant Designation due by 07/22/2024. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C Part 1 # <u>4</u> Exhibit C Part 2)(Deutsch-Perez, Deborah)
07/08/2024	Receipt of filing fee for Notice of appeal( <u>19-34054-sgj11</u> ) [appeal,ntcapl] ( 298.00). Receipt number A31573284, amount \$ 298.00 (re: Doc# <u>4115</u> ). (U.S. Treasury)
07/08/2024	<u>4116</u> Motion for leave to appeal (related document(s): <u>4104</u> Order on motion for leave) Filed by Creditor Hunter Mountain Investment Trust Objections due by 7/22/2024. (Deutsch-Perez, Deborah)
07/08/2024	<u>4117</u> Support/supplemental document <i>Appendix in Support of Motion for Leave to File Interlocutory Appeal</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4116</u> Motion for leave to appeal (related document(s): <u>4104</u> Order on motion for leave)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit

	5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12) (Deutsch–Perez, Deborah)
07/08/2024	<u>4118</u> Certificate of service re: 1) <i>Amended Motion for an Order Extending Duration of Trusts</i> ; and 2) <i>Notice of Hearing on Amended Motion for an Order Extending Duration of Trusts</i> Filed by Claims Agent Kurtzman Carson Consultants, LLC dba Verita Global (related document(s) <u>4109</u> Amended Motion to (RE: related document(s) <u>4100</u> Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Other Professional Highland Claimant Trust, <u>4110</u> Notice of hearing filed by Other Professional Highland Claimant Trust (RE: related document(s) <u>4109</u> Amended Motion to (RE: related document(s) <u>4100</u> Motion to extend/shorten time) Filed by Other Professional Highland Claimant Trust (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 7/29/2024 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>4109</u> , filed by Other Professional Highland Claimant Trust). (Kass, Albert)
07/10/2024	<u>4119</u> Hearing held on 7/10/2024. (RE: related document(s) <u>3695</u> Motion to intervene and Brief in Support filed by Creditor Acis Capital Management, L.P. (Appearances: T. Cooke and S Bates for Acis; M. Aigen and D. Deutsch–Perez for Highland CLO Management, Ltd.; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion denied, subject to proviso that nothing that happens in the contested matter regarding the allowance/disallowance of the HCLOM claim prejudices any partys rights in the Acis adversary proceeding. Counsel to submit order.) (Edmond, Michael)
07/10/2024	<u>4120</u> Response unopposed to (related document(s): <u>4100</u> Motion to extend time to (Highland Claimant Trust's Motion for an Order Extending Duration of Trust) filed by Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (Deutsch–Perez, Deborah)
07/11/2024	<u>4121</u> Request for transcript regarding a hearing held on 7/10/2024. The requested turn–around time is daily. NOTE* Request arrived at 4:58 pm. (Edmond, Michael)
07/12/2024	<u>4122</u> Transcript regarding Hearing Held 07/10/2024 Before Judge Stacey G.C. Jernigan (44 Pages) RE: Motion to Intervene (3695). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/10/2024. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>4119</u> Hearing held on 7/10/2024. (RE: related document(s) <u>3695</u> Motion to intervene and Brief in Support filed by Creditor Acis Capital Management, L.P. (Appearances: T. Cooke and S Bates for Acis; M. Aigen and D. Deutsch–Perez for Highland CLO Management, Ltd.; J. Morris for Reorganized Debtor. Nonevidentiary hearing. Motion denied, subject to proviso that nothing that happens in the contested matter regarding the allowance/disallowance of the HCLOM claim prejudices any partys rights in the Acis adversary proceeding. Counsel to submit order.)). Transcript to be made available to the public on 10/10/2024. (Rehling, Kathy)
07/12/2024	<u>4125</u> DISTRICT COURT Notice of docketing notice of appeal. Civil Action Number: 3:24–cv–01786–L. (RE: related document(s) <u>4111</u> Notice of appeal . filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4104</u> Order on motion for leave). (Whitaker, Sheniqua)
07/12/2024	<u>4126</u> DISTRICT COURT Notice of docketing notice of appeal. Civil Action Number: 3:24–cv–01787–L. (RE: related document(s) <u>4115</u> Notice of appeal . filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4104</u> Order on motion for leave). (Whitaker, Sheniqua)
07/15/2024	

	<u>4127</u> PDF with attached Audio File. Court Date & Time [07/10/2024 01:37:36 PM]. File Size [ 15077 KB ]. Run Time [ 01:04:16 ]. (19-34054). (admin).
07/15/2024	<u>4128</u> Notice of change of address filed by Interested Party James Dondero, Get Good Trust, NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, Strand Advisors, Inc., The Dugaboy Investment Trust. (Ruhland, Amy)
07/18/2024	<u>4130</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 06/30/2024 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
07/18/2024	<u>4131</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: 06/30/2024 filed by Other Professional Highland Claimant Trust. (Attachments: # <u>1</u> Global Notes to Post-Confirmation Report) (Annable, Zachery)
07/19/2024	<u>4132</u> Order denying ACIS Capital Management's motion to intervene (related document # <u>3695</u> ) Entered on 7/19/2024. (Okafor, Marcey)
07/22/2024	<u>4133</u> INCORRECT ENTRY: FILED IN WRONG CASE. REFILED IN CORRECT CASE 20-3060 AS DOCUMENT 133. Motion to compel re: discovery Responses filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit) (Ahmad, Joseph) Modified on 7/23/2024 (Tello, Chris).
07/22/2024	<u>4134</u> Response unopposed to (related document(s): <u>4109</u> Amended Motion to (RE: related document(s) <u>4100</u> Motion to extend/shorten time) filed by Other Professional Highland Claimant Trust) filed by Creditor Hunter Mountain Investment Trust. (Deutsch-Perez, Deborah)
07/22/2024	<u>4135</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. <i>by Right</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4111</u> Notice of appeal). Appellee designation due by 08/5/2024. (Deutsch-Perez, Deborah)
07/22/2024	<u>4136</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. <i>by Leave</i> filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4115</u> Notice of appeal). Appellee designation due by 08/5/2024. (Deutsch-Perez, Deborah)
07/24/2024	<u>4138</u> Certificate of no objection filed by Debtor Highland Capital Management, L.P., Other Professional Highland Claimant Trust (RE: related document(s) <u>4109</u> Amended Motion to (RE: related document(s) <u>4100</u> Motion to extend/shorten time)). (Annable, Zachery)
07/24/2024	<u>4139</u> DISRICT COURT Amended Notice of docketing notice of appeal. Civil Action Number: 3:24-cv-01787-L. (RE: related document(s) <u>4115</u> Notice of appeal . filed by Creditor Hunter Mountain Investment Trust (RE: related document(s) <u>4104</u> Order on motion for leave). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C Part 1 # 4 Exhibit C Part 2)) (Whitaker, Sheniqua)
07/26/2024	<u>4144</u> Order granting <u>4109</u> Motion to extend duration of Trusts. Entered on 7/26/2024. (Okafor, Marcey)
08/05/2024	<u>4145</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>3685</u> Notice of docketing notice of appeal/record, <u>3693</u> Statement of issues on appeal, <u>3906</u> Notice of appeal, <u>3908</u> Amended notice of appeal, <u>3917</u> Notice of docketing notice of appeal/record, <u>3945</u> Amended notice of appeal, <u>4074</u> Amended notice of appeal, <u>4111</u> Notice of appeal, <u>4115</u>

	Notice of appeal). (Annable, Zachery)
08/05/2024	<u>4146</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>4115</u> Notice of appeal). (Annable, Zachery)
08/06/2024	<u>4147</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 65 . Civil Case Number: 3:24-cv-01479-S (RE: related document(s) <u>4042</u> Notice of appeal (Ruhland, Amy) MODIFIED text on 03/20/2024 ., <u>4044</u> Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>4042</u> Notice of appeal). (Blanco, J.)
08/06/2024	<u>4148</u> Notice of docketing COMPLETE record on appeal. 3:24-cv-01479-S (RE: related document(s) <u>4042</u> Notice of appeal <u>4044</u> Amended notice of appeal filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Blanco, J.)

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

**In Re: Highland Capital Management, L.P**

**Dugaboy Investment Trust and Hunter  
Mountain Investment Trust, Appellant**

vs.

**Highland Capital Management, L.P., et al**

Appellee

§ Case No. **19-34054 SGJ 11**

§

§

§

**3:24-CV-1531-X**

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

**Volume 2  
APPELLANT RECORD**

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and Hunter Mountain Investment Trust*

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

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

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

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

**APPELLANTS' STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL – Page 1**

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

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

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

*v011* **II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

- 000001*
1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

Vol. 2	DATE	CASE NO.	DKT. NO.	DESCRIPTION
000687	02/22/2021	19-34054	1943	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief
000848	06/25/2021	19-34054	2491	Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of and Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief
00874	07/21/2021	19-34054	2599	Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of and Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief
00877	06/30/2022	19-34054	3382	Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust
Vol. 3	08/24/2022	19-34054	3465	Reorganized Debtor's Objection to Motion for Determination of Value
000912	08/25/2022	19-34054	3467	Limited Response in Support of Certain Requested Relief
000963	09/14/2022	19-34054	3520	The Highland Parties' Motion to Quash Subpoenas Served by the Dugaboy Investment Trust or for a Protective Order
000973				

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 4**

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*001164 thru Vol. 5*

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001778*

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 5**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

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<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

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<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

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<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

**16. Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

#### 17. **Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.’s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States’ (IRS) Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty’s Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty’s claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure**

**Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**69. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

**70. Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

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<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

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<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

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<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

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<sup>11</sup> The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

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<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

**in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in**

**Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

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In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	

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**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

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**PACHULSKI STANG ZIEHL & JONES LLP**

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<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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## **DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

## **C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

## **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

## **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

#### **D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

#### **F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

#### **I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

##### **If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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and

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[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

*Counsel for the Debtor and Debtor-in-Possession*

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

### **Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Case No. 19-34054
L.P., <sup>1</sup>	§	Chapter 11
	§	
Debtor.	§	
	§	

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A)  
CREATION OF AN INDEMNITY SUBTRUST AND (B) ENTRY INTO AN INDEMNITY  
TRUST AGREEMENT AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby moves (the “Motion”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) authorizing the (a) creation of an indemnity subtrust (the “Indemnity Subtrust”), and (b) entry into an indemnity trust agreement (the “Trust Agreement”), and (ii) granting related relief.

### **INTRODUCTION**<sup>2</sup>

1. Pursuant to this Motion, the Debtor requests authority to create the Indemnity Subtrust and enter into a Trust Agreement that is substantially consistent with terms set forth in the Term Sheet attached to this Motion as **Exhibit B** (collectively the “Indemnity Trust Documents”). As discussed below, the Indemnity Trust Documents will secure the indemnity obligations of the Claimant Trust, Litigation Trust and the Reorganized Debtor pursuant to the terms of the Claimant Trust Agreement, the Litigation Trust Agreement, the Reorganized Limited Partnership Agreement and the Plan (collectively the “Indemnity Obligations”).

2. The Debtor intends for the Indemnity Subtrust to be in lieu of directors’ and officers’ insurance (“D&O Insurance”), which the Debtor contemplated obtaining as a condition to the Effective Date for the benefit of the beneficiaries of the Indemnity Obligations. The Debtor and the Committee thoroughly explored the market for obtaining D&O Insurance. Based on such due diligence, the Debtor, in consultation with the Committee, determined that based, upon the prohibitive cost of D&O Insurance, securing the Indemnity Obligations through an Indemnity Subtrust is preferable and in the best interests of the Debtor’s estate and its creditors. Moreover, as discussed below, establishing the Indemnity Subtrust will facilitate the Effective

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<sup>2</sup> Capitalized terms used but not defined in this introduction have the meanings given to them below.

Date of the Plan which the Debtor anticipates will occur on or about August 1, 2021, if the Court approves the Motion.

### **JURISDICTION**

3. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

### **STATEMENT OF FACTS**

#### **A. The Debtor’s Bankruptcy Case**

5. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”).

6. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Bankruptcy Court. On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s chapter 11 case to this Court [Docket No. 186].<sup>3</sup>

7. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

B. **The Court's Confirmation of the Plan and Denial of Motions for a Stay Pending Appeal.**

8. On February 22, 2021, after a two-day hearing, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the "Confirmation Order") with respect to the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, as modified (the "Plan").<sup>4</sup>

9. James Dondero and certain of his related entities (collectively, the "Dondero Entities") appealed the Confirmation Order [Docket Nos. 1957, 1966, 1970, 1972] and filed motions in this Court seeking a stay of the Confirmation Order pending appeal [Docket Nos. 1955, 1967, 1971, 1973] (the "Stay Motions"). This Court denied the Stay Motions [Docket Nos. 2084, 2095].

10. Certain of the Dondero Entities subsequently filed motions for stay pending appeal in the District Court for the Northern District of Texas, Dallas Division (the "District Court"), in April 2021 (the "District Court Stay Motions").

11. In May 2021, following the grant of an expedited appeal by the Fifth Circuit Court of Appeals, certain of the Dondero Entities filed motions for stay pending appeal in the Fifth Circuit in May 2021 (the "Appellate Stay Briefs") despite not having a ruling on the District Court Stay Motions. On June 21, 2021, the Fifth Circuit denied the Appellate Stay Briefs.

12. On June 23, 2021, the District Court denied the District Court Stay Motions.

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<sup>4</sup> Unless otherwise noted, capitalized terms used herein have the meanings given to them in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. See *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Docket No. 1875].

C. **Conditions to the Effective Date of the Plan.**

13. Article VIII of the Plan contains the conditions to the Effective Date of the Plan. The two conditions that have delayed the occurrence of the Effective Date are (i) the Confirmation Order becoming a Final Order and (ii) the Debtor obtaining D&O Insurance acceptable to the Debtor, the Committee, the Claimant Trust Oversight Committee, and the Litigation Trustee.

14. In addition, the Debtor determined, in the weeks following confirmation, that it would require exit financing in order to maintain sufficient liquidity for post-Effective Date operations and to comply with its obligations under the Plan. The facts and circumstances leading to the Debtor's decision to obtain exit financing are set forth in the *Motion for Entry of an Order (i) Authorizing the Debtor to (a) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (b) Incur and Pay Related Fees and Expenses, and (ii) Granting Related Relief* [Docket No. 2229] (the "Exit Financing Motion"). The Court approved the Exit Financing at a hearing on June 25, 2021.

15. As discussed at the confirmation hearing, the Debtor encountered difficulty in obtaining D&O Insurance because of the litigiousness of the case and the threat that litigation would continue well beyond confirmation of the Plan. Nevertheless, after confirmation, the Debtor, working closely with the Committee, continued to pursue D&O Insurance. Ultimately, however, the Debtor, the Committee, and the Independent Board, including Mr. Seery, who will be the Claimant Trustee and manage the Reorganized Debtor, determined that the insurance that was available was both insufficient and too costly in light of the coverage being provided.

16. The Debtor, working closely with the Committee, subsequently investigated alternatives to traditional D&O Insurance that could provide the beneficiaries of the Indemnity

Obligations protection after the Effective Date. The most attractive alternative was to create the Indemnity Subtrust, the approval of which is being sought through this Motion. If the Court approves this Motion, the Debtor will waive the condition to the Effective Date requiring the Confirmation Order to become a Final Order and thereby paving the way for the Plan to become effective.

**D. Post-Effective Date Governance and Management**

17. The Plan provides for the creation of the Claimant Trust, the Litigation Trust, and the Reorganized Debtor on the Effective Date to facilitate the monetization of the Debtor's assets and the pursuit of Estate Claims for the benefit of the Debtor's creditors and stakeholders. As currently contemplated, the Claimant Trust will be overseen by James P. Seery, Jr., as the Claimant Trustee, and an Oversight Board, made up of the Debtor's largest creditors. The Claimant Trust is governed by the terms of the Claimant Trust Agreement.<sup>5</sup> The Litigation Sub-Trust is governed by the terms of the Litigation Trust Agreement.<sup>6</sup> And the Reorganized Debtor will be governed by the Reorganized Limited Partnership Agreement.<sup>7</sup> It is anticipated that Mr. Seery will be the Claimant Trustee and the chief executive officer of the Reorganized Debtor.

**E. Post-Effective Date Indemnification**

18. The terms of the Claimant Trust Agreement, the Litigation Trust Agreement, and the Reorganized Limited Partnership Agreement each provide for a broad indemnification of the parties tasked with managing the implementation of the Plan (collectively, the "Indemnified

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<sup>5</sup> The final Claimant Trust Agreement was filed as Exhibit R to *Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* [Docket No. 1811] on January 22, 2021 (the "January Supplement").

<sup>6</sup> The final Litigation Trust Agreement was filed as Exhibit T to the January Supplement.

<sup>7</sup> The final Reorganized Limited Partnership Agreement was filed as Exhibit Z to the January Supplement.

Parties”).<sup>8</sup> The costs of indemnifying the Indemnified Parties (the “Indemnification Costs”) were provided for in the Plan and the Plan Documents. The Indemnification Costs would be treated as expenses and be paid before, and be senior to, distributions to the Debtor’s pre-petition creditors, *i.e.*, the Claimant Trust Beneficiaries. The relevant documents also authorized the reservation of assets sufficient to fund the Indemnification Costs.

**A. The Indemnity Subtrust and Trust Agreement**

19. As discussed above, the Debtor has determined that it is in the best interests of the Debtor’s estate and its stakeholders to create the Indemnity Subtrust pursuant to the terms of the Trust Agreement. The Indemnity Subtrust will be administered by a third-party corporate trustee. The Indemnity Trust will, as discussed below, be funded on the Effective Date with \$2.5 million in cash and a note (the “Indemnification Note”) in the principal amount of \$22.5 million with such amounts to be held in reserve and used solely to pay Indemnification Costs that are not otherwise paid or payable by the Claimant Trust, Litigation Trust, or Reorganized Debtor, as applicable.

20. As contemplated by the Plan and consistent with the Claimant Trust Agreement, the Litigation Trust Agreement, and the Reorganized Limited Partnership Agreement, the Indemnification Costs have priority to other claims. The Indemnity Subtrust is the vehicle which ensures that adequate provision for such Indemnification Costs is made, notwithstanding the

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<sup>8</sup> The Indemnified Parties of (a) the Claimant Trust are (i) the Claimant Trustee (including each former Claimant Trustee), (ii) Delaware Trustee, (iii) the Oversight Board, and (iv) all past and present Members of the Oversight Board, and the employees, agents, and professionals of each of the foregoing; (b) the Litigation Trust are (i) the Litigation Trustee (including each former Litigation Trustee), (ii) the Oversight Board, and (iii) all past and present Members of the Oversight Board, and the employees, agents, and professionals of each of the foregoing; and (c) the Reorganized Debtor are (i) New GP LLC (as the Reorganized Debtor’s general partner) and each member, partner, director, officer, and agent thereof, (ii) each person who is or becomes an officer of the Reorganized Debtor, and (iii) each person who is or becomes an employee or agent of the Reorganized Debtor if New GP LLC determines in its sole discretion that such employee or agent should be indemnified. *See* Claimant Trust Agreement, § 8.2; Litigation Trust Agreement, § 8.2.; Reorganized Limited Partnership Agreement, §§ 10(b)-(c).

timing pursuant to which assets are monetized and distributions would otherwise be made to such beneficiaries of the Claimant Trust.

21. Certain material terms of the Trust Agreement and the Indemnity Subtrust are as follows:<sup>9</sup>

<b>Beneficiaries:</b>	The Indemnified Parties
<b>Indemnity Trustee</b>	A corporate trustee with appropriate trust powers under applicable state and/or federal law.
<b>Indemnity Trust Administrator</b>	Mr. Seery, initially in his capacity as the Claimant Trustee or in his individual capacity if no longer serving as the Claimant Trustee.
<b>Indemnity Trust Corpus</b>	At the inception of the Indemnity Trust, the trust corpus shall consist of the following, to be irrevocably contributed by the Grantor: <ol style="list-style-type: none"><li>1. Cash of \$2.5 million; and</li><li>2. the Indemnification Funding Note, in the principal amount of \$22.5 million.</li></ol> The foregoing contributions are intended to create and maintain a balance of liquid assets in the Indemnity Trust Account of not less than \$25 million (the "Indemnity Trust Account Minimum Balance").
<b>Indemnification Funding Note</b>	The Indemnification Funding Note will represent and document the Claimant Trustee's obligation to make additional cash deposits into the Indemnity Trust Account to satisfy the obligations of the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor, each of which will be jointly and severally liable under the Indemnification Funding Note. After the initial funding of principal under the Indemnification Funding Note, the principal balance thereof will at all times equal the amount representing the difference between (i) the Indemnity Trust Account Minimum Balance and (ii) the balance of liquid assets held in the Indemnity Trust Account, as reported on the most recent quarterly statement issued by the Indemnity Trustee.
<b>Withdrawal of Trust Assets</b>	Consistent with the Indemnity Trust's purpose as a collateral mechanism, withdrawals from the Indemnity Trust Account are contemplated only following a tender of for indemnity pursuant to Section 8.2 of the Claimant Trust Agreement and the failure of such Beneficiary to receive payment in full of such indemnity claim from the Claimant Trust within [30] days.
<b>Duration of the Indemnity Trust</b>	The Indemnity Trust will exist and remain in full force and effect until the <i>earlier of</i> (i) the expiry of all indemnification rights under Section 8.2 of the Claimant Trust Agreement, due to expiration of all applicable statutes of limitations (as determined by the Indemnity Trust Administrator, in his sole and absolute discretion), and (ii) the mutual agreement to terminate the Indemnity Trust by the Grantor and the Indemnity Trust Administrator.
<b>Liquidation and Final Distribution of Trust Assets</b>	Upon dissolution and liquidation of the Indemnity Trust, any assets remaining in the Indemnity Trust Account will be transferred to the Claimant Trust; provided, however, if the Claimant Trust is no longer in existence, then such distribution of the Indemnity Trust assets will be made according to the same distribution methodology contemplated in Section 9.2 of the Claimant Trust

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<sup>9</sup> The following is by way of summary only. Parties are encouraged to read the entirety of the Term Sheet. In the event that the description set forth herein is in conflict with the Term Sheet, the Term Sheet will control. All terms are subject to change.

**Governance of the Indemnity Trust**

Agreement (or the successor to such numbered section) on the effective date of the termination of the Claimant Trust.

Consistent with the Indemnity Trust's purpose as a collateral mechanism, it is not contemplated that the Indemnity Trust will need any comprehensive governance system. For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the Indemnity Trust Administrator, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee.

Beneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account, other than the Indemnity Trust Administrator in such capacity."

22. The Debtor believes that it has the support of the Committee with respect to the implementation of the Indemnity Subtrust. However, the Debtor and the Committee are still discussing the terms of the Trust Agreement and the foregoing terms may change. If the terms change, the Debtor will file an updated Term Sheet as necessary.

**B. Entry into the Trust Agreement Is an Exercise of the Debtor's Sound Business Judgment and Should Be Approved**

23. The Bankruptcy Code authorizes a debtor, after notice and a hearing, to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). It is well established in this jurisdiction that a debtor may use property of the estate outside the ordinary course of business if there is a good business reason for doing so. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App'x 429, 435 (5th Cir. 2016) (sale of debtors' assets under section 363(b) of the Bankruptcy Code must "be supported by an articulated business justification, good business judgment, or sound business reasons." (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)); *Petfinders LLC v. Sherman (In re Ondova Ltd)*, 620 F. App'x 290, 291 (5th Cir. 2015) (sale of debtors' assets under section 363(b) of the Bankruptcy Code is exercise of the trustee's sound business judgment"); *In re ASARCO, LLC*, 441 B.R. 813, 830 (Bankr. S.D. Tex. 2010) (outside of the ordinary course of

business, “for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property”) (quoting *In re Continental Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986)), *aff’d*, 650 F.3d 593 (5th Cir. 2011).

24. To determine whether the business-judgment test is satisfied, courts require “a showing that the proposed course of action will be advantageous to the estate.” *In re Pisces Energy, LLC*, 2009 Bankr. LEXIS 4709, at \*18 (Bankr. S.D. Tex. Dec. 21, 2009). In the absence of a showing of bad faith or an abuse of business discretion, a debtor’s business judgment will not be altered. *See, e.g., NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (1984); *Lubrizol Enter. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985). “Great judicial deference is given” to the “exercise of business judgment.” *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp.)*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005).

25. Entry into and performance under the Trust Agreement and the creation of the Indemnity Subtrust is in the best interests of the Debtor’s estate and represents a sound exercise of the Debtor’s business judgment. The Effective Date of the Plan cannot occur unless it is certain that there will be sufficient resources to pay the Indemnification Costs. As the Court is unfortunately aware, the Dondero Entities’ strategy is to sue the Debtor’s current management and post-Effective Date management whenever possible. Mr. Dondero admitted as much during the hearing held on June 8, 2021. The Debtor is therefore under no illusions. There will be Indemnification Costs and, unfortunately, they probably will be significant.

26. For that reason, among others, without the ability to guarantee payment of the Indemnification Costs, the Debtor would not be able to engage competent management to

oversee the implementation of the Plan, including the monetization of the Debtor's assets, prosecution of Estate Claims, and, ultimately, distributions to the Claimant Trust Beneficiaries. As discussed above, execution of the Trust Agreement is in lieu of obtaining D&O Insurance which, because of Mr. Dondero's history of litigiousness and his notoriety in the insurance industry could not be obtained in a cost-effective manner.

27. The Indemnity Subtrust (when coupled with the Exit Facility) will allow the Plan to become effective and permit the Reorganized Debtor to monetize its assets and pay allowed claims, as contemplated under the Plan, while the Reorganized Debtor or Litigation Trustee, as applicable, simultaneously pursues Estate Claims and otherwise attempts to recover value for creditors.

28. For these reasons, the Debtor submits that entering into the Trust Agreement and the creation of the Indemnity Subtrust will be an exercise of its sound business judgment, in the best interests of the Debtor's estate, and should be approved.

**C. Waiver of the Stay Period Pursuant to Bankruptcy Rule 6004(h) Is Proper**

29. The Indemnity Subtrust is required to promptly implement the Effective Date. Consequently, the Debtor requests that the Court enter an order providing that the Debtor has established cause to exclude the relief requested herein from the fourteen-day stay period provided under Bankruptcy Rule 6004(h). Accordingly, the Debtor requests that the Order authorizing the Debtor to enter into the Trust Agreement be effective immediately upon entry such that the Debtor may proceed to complete the necessary related work to enable the prompt occurrence of the Effective Date.

**Notice**

30. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United

States Attorney for the Northern District of Texas; (c) the Debtor's principal secured parties; (d) counsel to the Committee; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Intentionally Blank]*

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: June 25, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT A**

**Proposed Order**

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

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<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Case No. 19-34054</b>
	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Re: Docket No. _____</b>
	§	

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**ORDER APPROVING DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I)  
AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B)  
ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING  
RELATED RELIEF**

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Upon the *Debtor’s Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* (the “Motion”),<sup>1</sup> and the Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and

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<sup>1</sup> All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is granted as set forth herein.
2. The Debtor is authorized to enter into and perform under the Trust Agreement and consummate the transactions contemplated thereby, including the creation of the Indemnity Subtrust.
3. The Debtor is authorized to negotiate, prepare, execute, and deliver all documents and take such other action as may be necessary or appropriate to implement, effectuate, and fully perform its obligations as and when they are incurred and come due under the Trust Agreement.
4. The terms and provisions of this Order shall be binding in all respects upon all parties in this chapter 11 case, the Debtor, its estate, and all successors and assigns thereof.
5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

**EXHIBIT B**

## TERM SHEET FOR INDEMNITY TRUST AGREEMENT

This Term Sheet sets forth the basic terms of a proposed trust (the “Indemnity Trust”) to provide collateral security supporting the indemnification obligations specified in (i) Section 8.2 of that certain Claimant Trust Agreement, effective as of [●], 2021 (the “Claimant Trust Agreement”), establishing that certain claimant trust (the “Claimant Trust”) pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management L.P (as Modified)* (the “Plan”), (ii) Section 8.2 of the Litigation Sub-Trust Agreement, establishing the Litigation Sub-Trust pursuant to the Plan, and (iii) Section 10 of the Reorganized Limited Partnership Agreement (as defined in the Plan), establishing the Reorganized Debtor (as defined in the Plan) pursuant to the Plan. The Indemnity Trust is based on the fundamental premise, as set forth under the Plan and consistent with the Claimant Trust Agreement and related documents, that the indemnification rights under the Claimant Trust are senior priority obligations of the Claimant Trust, relative to the classes of beneficiaries thereunder, and that adequate provision for such indemnification needs to be funded, notwithstanding the timing pursuant to which assets are realized by the Claimant Trust and distributions would otherwise be made to such beneficiaries of the Claimant Trust. The Indemnity Trust is not intended to address any qualifications, requirements or standards for indemnification; such matters are to be addressed solely under and pursuant to the standards set forth in Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub-Trust Agreement, and Section 10 of the Reorganized Limited Partnership Agreement. This Term Sheet assumes that the Indemnity Trust is intended solely as a collateral mechanism, to fund indemnification claims that were tendered to but not paid by the Claimant Trust, Litigation Sub-Trust or the Reorganized Debtor within a reasonable period of time (thirty (30) days) following such claim being made. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Claimant Trust Agreement.

<b>Grantor</b>	Claimant Trust, pursuant to the authority granted under Section 6.1(a) of the Claimant Trust Agreement.
<b>Beneficiaries</b>	<p>The Beneficiaries of the Indemnity Trust shall be the following:</p> <ol style="list-style-type: none"> <li>1. Indemnified Parties under Section 8.2 of the Claimant Trust Agreement and their respective employees, agents and professionals, which are also indemnitees under the same provision;</li> <li>2. “Indemnified Parties” under Section 8.2 of the Litigation Sub-Trust Agreement and their respective employees, agents and professionals, which are also indemnitees under the same provision; and</li> <li>3. “Covered Persons” under Section 10 of the Reorganized Limited Partnership Agreement.</li> </ol>
<b>Indemnity Trustee</b>	A corporate trustee with appropriate trust powers under applicable state and/or federal law.
<b>Indemnity Trust Administrator</b>	James P. Seery, Jr., initially in his capacity as the Claimant Trustee or in his individual capacity if no longer serving as

	<p>the Claimant Trustee. If James P. Seery, Jr. voluntarily resigns or is unable to serve as Indemnity Trust Administrator, his legal successors or assigns.</p> <p>If Cause (as defined in the Claimant Trust Agreement) to remove James P. Seery Jr. or the then current Indemnity Trust Administrator is shown by final order of a court of competent jurisdiction, a successor chosen by the Claimant Trustee.</p> <p>Governance of the Indemnity Trust shall be effected by and through the Indemnity Trust Administrator (see “Governance”).</p>
<p><b>Indemnity Trust Corpus</b></p>	<p>At the inception of the Indemnity Trust, the trust corpus shall consist of the following, to be irrevocably contributed by the Grantor:</p> <ol style="list-style-type: none"> <li>1. Cash of \$2.5 million; and</li> <li>2. the Indemnification Funding Note, in the principal amount of \$22.5 million.</li> </ol> <p>The foregoing contributions are intended to create and maintain a balance of liquid assets in the Indemnity Trust Account of not less than \$25 million (the “Indemnity Trust Account Minimum Balance”).</p>
<p><b>Indemnification Funding Note</b></p>	<p>The Indemnification Funding Note will represent and document the Claimant Trustee’s obligation to make additional cash deposits into the Indemnity Trust Account to satisfy the obligations of the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor, each of which will be jointly and severally liable under the Indemnification Funding Note; such deposits are intended to ensure proper allocation of the respective assets of the Claimant Trust, the Litigation Sub-Trust and the Reorganized Debtor to the Indemnity Trust upon material monetizations by the Claimant Trust, reflective of the Claimant Trustee’s power to reserve for senior indemnity claims under Section 6.1(a) of the Claimant Trust Agreement. Payments under the Indemnification Funding Note will be senior in priority to any distributions to the Claimant Trust beneficiaries.</p> <p>The initial principal amount of the Indemnification Funding Note will be \$22.5 million, representing the extent of the additional collateral to be allocated to the Indemnity Trust, such that the Indemnity Trust Account</p>

	<p>will maintain the Indemnity Trust Account Minimum Balance.</p> <p>The initial principal amount of the Indemnification Funding Note will be paid in full or in part on the earlier of (a) demand for payment from the Indemnity Trust Administrator or (b) the date at which the net asset value (asset value net of liabilities and expense reserves) is less than 200% of the principal amount of the Indemnification Funding Note. Subject to the foregoing, the Claimant Trustee will have sole and absolute discretion to determine the timing and amount of the payments of the initial principal amount of the Indemnification Funding Note consistent with his view of liquidity needs of the Claimant Trust and related entities and the requirements of any financing agreement binding on the Claimant Trust. Upon the Claimant Trustee's determination that such a payment should be made, the amount of the payment shall be due within five (5) days of such a determination.</p> <p>After the initial funding of principal under the Indemnification Funding Note, the principal balance thereof will at all times equal the amount representing the difference between (i) the Indemnity Trust Account Minimum Balance and (ii) the balance of liquid assets held in the Indemnity Trust Account, as reported on the most recent quarterly statement issued by the Indemnity Trustee. Such principal balance of the Indemnification Funding Note will be documented by the Indemnity Trust Administrator and will be paid in full, in a manner determined by the Claimant Trustee consistent with the procedures set forth in the immediately preceding paragraph hereof.</p> <p>For the avoidance of doubt, the foregoing payments under the Indemnification Funding Note will be senior to any distribution to beneficiaries under the Claimant Trust. In the event that the liquid assets of the Claimant Trust are insufficient to satisfy the foregoing payments, the Claimant Trustee must take all reasonable action to satisfy such obligations under the Indemnification Funding Note, including accessing any available credit lines or third-party leverage, and no current payments to Claimant Trust beneficiaries will be made until all current amounts due under the Indemnification Funding Note have been made. Consistent with the foregoing, upon written request of the Indemnity Trust Administrator, the Claimant Trustee shall provide collateral to secure any amounts due or which may become due under the Indemnification Funding Note, including the posting of a bank letter of</p>
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	<p>credit, under terms acceptable to the Indemnity Trust Administrator.</p> <p>The Indemnification Funding Note will not bear interest, other than that which must be imputed under applicable law. All amounts due under the Indemnification Funding Note shall be absolute, regardless of their characterization.</p>
<b>Indemnity Trust Account</b>	<p>A custodial account to be maintained/held by the Indemnity Trustee. The trust corpus and other assets of the Indemnity Trust shall be held in such Indemnity Trust Account maintained by the Indemnity Trustee, for the benefit of the Beneficiaries. Any investment income (see “Investment of Trust Assets”) shall be retained in the Indemnity Trust Account and will be included in the balance of Indemnity Trust Corpus. Any investment income, investment loss and Withdrawals of Trust Assets will be included in the determination of whether the Indemnity Trust Account Minimum Balance has been achieved (see “Indemnification Funding Note”).</p>
<b>Reports and Account Statements</b>	<p>The Indemnity Trustee will provide comprehensive Indemnity Trust Account statements to the Beneficiaries and the Indemnity Trust Administrator on a quarterly basis, beginning at inception. Such statements will include the balance of the assets held in the Indemnity Trust Account as of the subject reporting date, plus a full accounting of all deposits (including amounts collected under the Indemnification Funding Note and any investment income) and any withdrawals/distributions made during the subject period and the effect of any investment losses. Such statements may be redacted for any sensitive information, as determined by the Indemnity Trust Administrator, in his sole and absolute discretion.</p>
<b>Withdrawal of Trust Assets</b>	<p>Consistent with the Indemnity Trust’s purpose as a collateral mechanism, withdrawals from the Indemnity Trust Account are contemplated only following a tender of for indemnity pursuant to Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, or the Reorganized Limited Partnership Agreement and the failure of such Beneficiary to receive payment in full of such indemnity claim from the Claimant Trust within 30 days. It is expressly contemplated that in the ordinary course of their respective businesses, the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor will pay the costs and expenses of</p>

	<p>defending indemnified claims as well as the amount of any such claims if successful. The Indemnity Trust will serve as a source of indemnification for such claims as provided herein in the event that any of the Claimant Trust, the Litigation Sub-Trust, or the Reorganized Debtor, as the case may be, does not pay such claims.</p> <p>A request for withdrawal of assets from the Indemnity Trust Account must be presented to the Indemnity Trustee, with a copy to the Indemnity Trust Administrator, and must be accompanied by an written certification of the following:</p> <ol style="list-style-type: none"> <li>1. A claim for indemnification was made under Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, or the Reorganized Limited Partnership Agreement, accompanied by a copy of such claim and all underlying documentation.</li> <li>2. The Beneficiary did not receive full payment with respect to such indemnification claim with 30 days.</li> </ol> <p>Following the receipt of the above information, the Indemnity Trust Administrator will issue a withdrawal/distribution order to the Indemnity Trustee, with a copy to the claiming Beneficiary. Upon receipt of such order, the Indemnity Trustee will pay the full amount of the requested distribution to the subject Beneficiary; such payment will be made within 3 business days of receipt.</p> <p>In the event that a claiming Beneficiary receives payment with respect to the subject indemnity claim from the Claimant Trust or any other source, such Beneficiary must promptly notify the Indemnity Trustee and the Indemnity Trust Administrator, and the subject request for payment from the Indemnity Trust will be revised accordingly; to the extent that any such amounts were already received from the Indemnity Trust, such amounts must be repaid to the Indemnity Trust Account, without interest.</p>
<p><b>Duration of the Indemnity Trust</b></p>	<p>The Indemnity Trust will exist and remain in full force and effect until the <i>earlier of</i> (i) the expiry of all indemnification rights under Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, and the Reorganized Limited Partnership Agreement due to expiration of all applicable statutes of limitations (as determined by the Indemnity Trust Administrator, in his sole and absolute discretion), and (ii)</p>

	<p>the mutual agreement to terminate the Indemnity Trust by the Grantor and the Indemnity Trust Administrator.</p> <p>For the avoidance of doubt, neither the liquidation or termination of the Claimant Trust nor the legal existence of the Grantor or any other party thereto will have any effect on the legal existence of the Indemnity Trust.</p>
<b>Wind-down</b>	<p>Upon the determination of the Indemnity Trust Administrator that the Claimant Trust has substantially completed its efforts to monetize and distribute its assets or such earlier date that the Indemnity Trust Administrator shall determine, the Indemnity Trust Administrator and the Claimant Trust Oversight Committee shall work in good faith to replace the Indemnity Funding Note with a suitable third-party insurance policy.</p>
<b>Liquidation and Final Distribution of Trust Assets</b>	<p>Upon dissolution and liquidation of the Indemnity Trust, any assets remaining in the Indemnity Trust Account will be transferred to the Claimant Trust; provided, however, if the Claimant Trust is no longer in existence, then such distribution of the Indemnity Trust assets will be made according to the same distribution methodology contemplated in Section 9.2 of the Claimant Trust Agreement (or the successor to such numbered section) on the effective date of the termination of the Claimant Trust.</p>
<b>Limitations on Transferability</b>	<p>A beneficial interest in the Indemnity Trust may not be transferred, assigned or hypothecated without the consent of the Indemnity Trust Administrator in his sole and absolute discretion, provided that such transfer, assignment or hypothecation does not confer upon such assignee status as a Beneficiary under the Indemnity Trust. The Indemnity Trust Administrator may impose such conditions and other terms upon any transfer, assignment or hypothecation as he considers appropriate, in his sole and absolute discretion.</p> <p>In the event of an assignment, the foregoing limitations on transferability will continue to apply in all respects to such beneficial interest and will be binding on the assignee of such beneficial interest.</p>
<b>Governance of the Indemnity Trust</b>	<p>Consistent with the Indemnity Trust's purpose as a collateral mechanism, it is not contemplated that the Indemnity Trust will need any comprehensive governance system. For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the</p>

	<p>Indemnity Trust Administrator, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee.</p> <p>Consistent with the foregoing, the Indemnity Trust Administrator shall have the power to take any actions the Indemnity Trust Administrator, in his sole and absolute discretion, deems desirable or necessary in connection with the operation of the Indemnity Trust.</p> <p>The Indemnity Trust Administrator will have the power and authority to retain such experts and other advisors, including financial consultants and legal counsel, as he considers appropriate to address any matter relating to the Indemnity Trust. Without limiting the generality of the foregoing, to the extent the Indemnity Trust Administrator identifies any conflict of interest in his roles as the Claimant Trustee, on the one hand, and the Indemnity Trust Administrator, on the other, or otherwise relating to the Indemnity Trust, the Indemnity Trust Administrator may retain such experts, including legal counsel, as he, in his sole and absolute discretion, considers appropriate to evaluate and resolve any such conflict of interest. The cost of any such advisors/experts/counsel will be paid by the Claimant Trust, and if not paid in a timely fashion, can represent a claim for indemnity under the Indemnity Trust Agreement (see “Withdrawal of Trust Assets”). Beneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account, other than the Indemnity Trust Administrator in such capacity.”</p>
<p><b>Indemnification of Indemnity Trustee</b></p>	<p>The Indemnity Trustee and the Indemnity Trust Administrator will be provided customary indemnification rights typical for a collateral trust of this type.</p>
<p><b>Nature and Evidence of Beneficial Interest</b></p>	<p>A beneficial interest in the Indemnity Trust will not entitle a Beneficiary to any direct right, title or interest in or to the specific assets held in the Indemnity Trust Account, and no Beneficiary will have any right to call for a partition or division of such assets.</p> <p>A beneficial interest in the Indemnity Trust will not be evidenced by any certificate, security, receipt or any other instrument. The Indemnity Trust Administrator will maintain a record of the Beneficiaries and their respective beneficial interests in the Indemnity Trust.</p>

	Notwithstanding the foregoing, the Indemnity Trustee or the Indemnity Trust Administrator will be authorized to provide evidence of beneficiary status upon request by a Beneficiary.
<b>Investment of Trust Assets</b>	The cash or other liquid assets in the Indemnity Trust Account will be invested in a manner consistent with that set forth in Section 3.4 of the Claimant Trust Agreement; provided, however, the approval of the Oversight Board will not be needed. Such investment function will be overseen by the Indemnity Trust Administrator and effected by the Indemnity Trustee.
<b>Governing Law</b>	The Indemnity Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.
<b>Venue</b>	Each of the parties consents and submits to the exclusive jurisdiction of the Bankruptcy Court of the Northern District of Texas for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Indemnity Trust Agreement or any act or omission of the Indemnity Trustee (acting in his capacity as the Indemnity Trustee or in any other capacity contemplated by this Indemnity Trust Agreement); provided, however, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 21, 2021

  
United States Bankruptcy Judge

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Case No. 19-34054</b>
	§	<b>Chapter 11</b>
<b>Debtor.</b>	§	
	§	<b>Re: Docket No. 2491</b>
	§	

**ORDER APPROVING DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I)  
AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B)  
ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING  
RELATED RELIEF**

Upon the *Debtor’s Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* (the “Motion”),<sup>1</sup> and the Court finding that: (i) this Court has jurisdiction over this matter

<sup>1</sup> All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Trust Agreement and the consummation of the transactions contemplated thereby is an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is **GRANTED** as set forth herein and as modified on the record to provide that the Indemnification Note will be unsecured.

2. Pursuant to 11 U.S.C. §§ 363(b) and 105(a), the Debtor is authorized (i) to enter into and perform under the Trust Agreement and consummate the transactions contemplated thereby, including the creation of the Indemnity Subtrust., and (ii) to negotiate, prepare, execute, and deliver all documents and take such other action as may be necessary or appropriate to implement, effectuate, and fully perform its obligations as and when they are incurred and come due under the Trust Agreement.

3. The terms and provisions of this Order shall be binding in all respects upon all parties in this chapter 11 case, the Debtor, its estate, and all successors and assigns thereof.

4. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

Debtor.

Chapter 11

Case N. 19-34054 (SGJ)

**MOTION FOR DETERMINATION OF THE VALUE OF THE ESTATE AND ASSETS  
HELD BY THE CLAIMANT TRUST**

**I. INTRODUCTION**

1. By this Motion, the Dugaboy Investment Trust (“Dugaboy”) respectfully seeks a determination by this Court of the current value of the estate and an accounting of the assets currently held the Claimant Trust and available for distribution to creditors, as contemplated by the Fifth Amended Plan of Reorganization, as Amended (the “Plan”) of Highland Capital Management, L.P. (the “Debtor” or “HCMLP”). Notably, although the latest quarterly operating report filed by the Reorganized Debtor projects a distribution to creditors totaling \$205 million (a scant \$11 million more than what the Debtor projected in its Plan Disclosure), Dugaboy has reason to believe that the mix of assets held by the Claimant Trust has changed dramatically since this Court confirmed the Plan and that the estate presently has sufficient cash and other assets with which to pay creditors in full plus interest. At the same time, the Reorganized Debtor has reported that it has paid to professionals nearly \$70 million since the Effective Date of the Plan—an enormous burn for an estate that projects payment of fractionally more to creditors. And extrapolating from the Reorganized Debtor’s most recent financial

reporting, it appears that the estate has reserved or accrued for tens of millions of dollars of additional professional fees.

2. Notably, the Court previously described Dugaboy’s interest in the estate as “extremely remote,” a finding based solely on a projection as of February 2021. *See* Order dated February 22, 2021, Dkt. 1943 (“Plan Confirmation Order”) at ¶ 19; *see also id.*, ¶ 18. That projection was made at an arbitrary point in time (now 16 months ago) and was based on the value of assets then held by the estate, which necessarily fluctuates. But the value of the assets available for distribution to creditors is vastly different today than it was in February of 2021. We know this because certain assets have been liquidated, transforming what were once projections into finite values, and other assets have increased in value. Dugaboy believes that the combination of assets and cash held by the Claimant Trust in its own name and held in various funds, reserve accounts, and subsidiaries—if liquidated—would be sufficient to pay all Claimant Trust Beneficiaries in full with interest or, at the very least, come very close. In other words, based upon reality as opposed to the Debtor’s projections 16 months ago, the nature of Dugaboy’s interest in the estate—and its standing to seek redress in the bankruptcy proceedings—cannot now be classified as remote.

3. By way of example only, at the time of the Debtor’s settlement with HarbourVest, it reported the value of HarbourVest’s interest in Highland CLO Funding, Ltd. (“HCLOF”) as \$22 million. *See* Dkt 1625, p.9 at fn. 5. But based on the research Dugaboy has done, HarbourVest’s interest in HCLOF was worth closer to \$45 million at the time the Debtor acquired that interest and is worth approximately \$75 million today, with the majority of the value held in cash.<sup>1</sup>

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<sup>1</sup> We know, for example, that HCLOF’s interest in the Acis CLOs is worth at least \$53 million, of which the Debtor {00378347-2}

4. Dugaboy's interest in the estate is very much real and realizable because there is a potential for significant payment to residual equity holders, and the way in which the estate is managed (including its expenses for such management) could detrimentally affect Dugaboy's financial interests. Indeed, Dugaboy believes that the estate has ample cash and other assets with which to pay all creditors in full, with interest, and to pay a return to residual equity holders like Dugaboy. In particular, Dugaboy believes that the Claimant Trustee has sold all but four major assets of the estate, bringing the value of the Claimant Trust to approximately \$685 million, including almost \$300 million in cash. In other words, the funds available to pay creditors and equity holders has grown tremendously since Plan confirmation. This difference in value is important—and underscores the need for this Motion—because, if accurate, it means that professionals representing the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust are litigating claims against Dugaboy, Hunter Mountain, and others, even though the only beneficiaries of any recovery from such litigation will be Dugaboy and Hunter Mountain. In other words, Dugaboy and Hunter Mountain are essentially footing the bill for huge legal fees so that the Claimant Trust and Litigation Sub-Trust can sue them only to return any recoveries back to them. Dugaboy has a very significant interest in a determination as to whether sufficient funds currently exist or will exist to pay all creditors in full such that the estate and its professionals can stop incurring professional fees to pursue unnecessary litigation.

5. Even if the estate does not have sufficient assets at present to pay all allowed claims in full with interest, a determination of the current value of the estate would still benefit all creditors, residual equity holders, and parties-in-interest because such a determination would reveal the spread between the estate's asset value (exclusive of various adversary proceedings,

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is entitled to 50.62% as a result of the acquisition of the HarbourVest interest, or \$26.8 million. HCLOF also had significant holdings in the Highland CLOs, which held, among other assets, MGM stock. See Dkt. 1235 at ¶¶ 1-2. {00378347-2}

including the notes lawsuits and the Kirschner litigation) and the estate's net liabilities to creditors. If all interested parties were able to understand that spread, it could facilitate a settlement that would achieve payment of creditors in full and resolution of all outstanding litigation while preventing the further enormous burn occasioned by legal fees and other costs currently borne by the estate (nearly \$70 million since the Effective Date and accruing at a rate of what Dugaboy estimates to be approximately \$5-\$7 million/month).<sup>2</sup>

6. Accordingly, this Motion seeks an evidentiary hearing so that the Court may determine the current amount of cash and other assets currently held by the Claimant Trust for distribution to Claimant Trust Beneficiaries (as that term is defined in the Plan). At the very least, disclosure of the assets held by the Claimant Trust may facilitate a meaningful settlement discussion and potentially end the litigation and appellate proceedings currently burdening the estate and resulting in very high legal fees, to the detriment of creditors and residual equity holders.

## **II. BACKGROUND**

### **A. HCMLP Files A Chapter 11 Petition Anticipating A Quick Restructuring And Exit From Bankruptcy**

7. HCMLP filed its chapter 11 petition in bankruptcy in the United States Bankruptcy Court for the District of Delaware on October 16, 2019. Dkt. 3.<sup>3</sup> The case was transferred over HCMLP's objection to this Court on December 4, 2019. Dkt. 1. As the Court has since acknowledged, at the time HCMLP filed its chapter 11 petition, the company had "relatively insignificant secured indebtedness," "did not have problems with its trade vendors or landlords," and "did not suffer any type of catastrophic business calamity." Order (I)

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<sup>2</sup> See Dkt. 3325, indicating that the Reorganized Debtor has disbursed \$76,788,959 since the Effective Date, of which only \$6,966,266 has been paid to administrative, secured, priority, and general unsecured claims.

<sup>3</sup> All references to the docket are to the docket entries in the Bankruptcy Court for the Northern District of Texas.

Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief (“Plan Confirmation Order”), Dkt. 1943, ¶ 8. Indeed, at the time of its filing, HCMLP had over \$550 million in assets and no outstanding judgment liabilities against it other than the award issued by the American Arbitration Association in favor of the Redeemer Committee of the Crusader Funds.<sup>4</sup> As a result, there was every reason to believe that HCMLP could achieve a quick and orderly restructuring of its judgment debt and emerge from bankruptcy a going concern.

**B. The Debtor and its Management Were Not Required To Disclose Assets and Transactions During Bankruptcy Proceedings**

8. As the Court is aware, a quick exit from bankruptcy did not transpire as anticipated. During the 16 months between the time of HCMLP’s bankruptcy filing and the Court’s approval of the Plan, the estate’s value did not remain static. Nonetheless, the Debtor—with the Court’s approval—only provided the public with limited information regarding the mix of assets held by the estate (including at the subsidiary level). The Court likewise granted the Debtor’s request to shield from public scrutiny asset sales conducted by the Debtor’s management during bankruptcy. For example, the Court authorized the Debtor to place assets that were acquired as part of the Debtor’s settlement with HarbourVest into a non-debtor special purpose entity. *See* Dkt. 1788. That placement meant that the true value of the asset, the asset’s appreciated value, and its ultimate liquidation were not reported or disclosed to creditors or other interested parties.

9. The Court also did not require the Debtor to file any Rule 2015.3 reports during the bankruptcy proceedings, notwithstanding that the Debtor did not seek relief from the

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<sup>4</sup> HCMLP expected to pay the Redeemer Committee approximately \$110 million on that award, after offsets and other adjustments.

requirement.<sup>5</sup> Such reports were especially important here, where the Debtor held most of its assets in subsidiaries. The Debtor's failure to file the required reports is difficult to understand. Indeed, despite this Court's characterization of HCMLP as a "byzantine complex" (*see* Plan Confirmation Order, ¶ 6), the assets of the estate fall into a handful of discrete investments (less than ten line items), most of which have audited financials and/or were required to make monthly or quarterly net-asset-value or fair-value determinations.<sup>6</sup> Further, the Debtor provided information regarding these assets' value to the Official Committee for Unsecured Creditors ("UCC") on a weekly basis during the bankruptcy proceedings, and the UCC was able to summarize the so-called "byzantine complex" in two short pages attached to the Debtor's Amended Operating Protocols. *See* Dkt. 466-1. Because the same information was not provided in Rule 2015.3 reports, there was no publicly available information regarding the composition of assets and the corresponding liabilities held by the Debtor at the subsidiary level, making it impossible for outside stakeholders and interested parties to fairly evaluate the Debtor's estate.

10. Following an extended period of non-transparency and vague quarterly reporting in which the Debtor represented that the estate had suffered a loss in value of more than \$230 million (*see* Disclosure Statement, Dkt. 1473), Dugaboy filed a motion seeking appointment of an examiner to independently examine the estate, the reasons for its apparent losses, and other

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<sup>5</sup> As the Court is aware, there is a mechanism for seeking such relief under the Federal Rules of Bankruptcy Procedure. Specifically, the Court could have granted the Debtor relief from the Rule 2015.3 disclosure requirement "for cause," including that "the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available." Fed. R. Bankr. P. 2015.3(d). But HCMLP did not seek relief from the requirements under Rule 2015.3(a), nor did it make any "good faith effort" to comply with the Rule. To the contrary, Mr. Seery publicly represented that the task of filing the required reports simply "fell through the cracks." *See* Dkt. 1905 (Feb. 3, 2021 Hr'g Tr. at 49:5-21).

<sup>6</sup> Indeed, during one deposition, Mr. Seery was able to identify most of HCMLP's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by the Debtor's subsidiaries. *See* Deposition of James P. Seery, Jr. ("Seery Dep."), attached hereto as Exhibit A, at 22:4-10, 23:1-29:10.

issues relating to estate value. *See generally* Dkt. 1752. Although Dugaboy filed the motion well before the Plan confirmation hearing, the Court set the motion six weeks out on a date well after the confirmation hearing. *See* Dkt. 1832. Thereafter, the Court denied the motion as moot in light of the Plan Confirmation Order, which the Court held stripped it of authority to appoint an examiner. Dkt. 1960.

11. In connection with the hearing in the Confirmation of the Debtor’s Plan, the Debtor offered up a chart (entitled “Plan Analysis v. Liquidation Analysis”), which attempted to reflect both what creditors could receive in a liquidation and that which Creditors could receive under the Plan. But the analysis reflected in that document is problematic for at least two reasons. First, the document was a summary based upon projections.<sup>7</sup> Second, the Debtor refused to disclose subsidiary ledgers that comprised a significant amount of the Debtor’s monetization value. But based on that analysis, and the testimony of Mr. Seery at the Plan confirmation hearing—which the Court accepted—the Debtor projected at confirmation that it would realize only \$257 million dollars from the “monetization” of its assets by December 31, 2022. Dkt. 1894 (Feb. 2, 2021 Hr’g Tr.) at 120:10-121:3, 122:13-123:2.

12. It is now close to a year and a half after the Debtor’s Plan projections were provided to the Court, and Dugaboy is merely asking for the Court to conduct an evidentiary hearing so that the projections can be judged by the realities of the ongoing liquidation of estate assets and the known increases in asset value. Based on known settlements and other filings reflecting allowed claims, Dugaboy believes that allowed claims to be paid now total at least \$400 million. But nobody has disclosed the total other liabilities of the Claimant Trust. Nor do interested stakeholders know how much was drawn on the exit loan approved by this Court,

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<sup>7</sup> What is more, Seery admitted under oath that, in putting together the projections, the Debtor’s management arbitrarily adjusted downward third-party valuations of certain Debtor assets. Seery Dep., Ex. A, at 48:1-50:6.

how much is outstanding on that loan today, and what other payables and contractual liabilities are owed on account of the Claimant Trust and the Litigation Sub-Trust. All of this information is critical to ascertaining what the estate is capable of paying to creditors now or in the near-term and whether a remainder will be left for the residual equity holders.

13. After confirmation of the Debtor's Plan but before the Plan Effective Date, in light of evolving information relating to the value of the estate, Dugaboy moved to compel the Debtor's compliance with Rule 2015.3. Dkt. 2256. In response, the Debtor argued that compliance with the Rule was too cumbersome, which again, strains credulity for several reasons. First, the Debtor's management, including Mr. Seery, are experienced estate professionals who are accustomed to dealing with complex financial structures. Second, the Debtor, as a registered investment advisor, was required by law to know precisely what assets it had under management. And third the financial information that HCMLP should have disclosed pursuant to Rule 2015.3 was at management's fingertips and indeed was information that management was required to disclose to the UCC on a *weekly basis* pursuant to its Amended Operating Protocols. *See supra* at ¶ 11 & n. 3; Dkt. 466 at p. 3.

14. The Court set an initial hearing on Dugaboy's Rule 2015.3 motion for June 20, 2021, but thereafter continued the hearing until September 2021 to ensure the hearing occurred after the Effective Date. The Court then denied the motion as moot in light of the intervening effective date of the Plan in August 2021. *See* Dkt. 2812.

### **C. The Bankruptcy Court Approves A Liquidation Plan**

15. The Court ultimately approved a Plan that contemplates the liquidation of HCMLP and an orderly wind-down of operations. *See* Plan Confirmation Order, ¶ 2. In reaching its conclusion that the Plan was in the "best interest" of creditors and other

stakeholders, the Court expressly relied upon the Amended Liquidation Analysis/Financial Projections filed by the Debtor that projected a recovery by Class 7 General Unsecured Creditors of 85% and Class 8 General Unsecured Creditors of 71%. *Id.*, ¶ 52; *see also* Dkt. 1875 at p. 4.

16. Further, the Court overruled objections to the Plan lodged by entities it deemed related to Mr. Dondero, including Dugaboy. In doing so, the Court acknowledged that Dugaboy has a residual ownership interest in HCMLP and therefore “technically” had standing to object to the Plan. *See* Plan Confirmation Order, ¶¶ 17-18. But based on the Debtor’s financial projections at the time of confirmation, the Court found that the plan objectors’ “economic interests in the Debtor appear to be extremely remote.” *Id.*, ¶ 19; *see also id.*, ¶ 17 (“the remoteness of their economic interests is noteworthy”).

**D. The Plan Grants Dugaboy A Springing Interest In The Claimant Trust**

17. Notably, the Plan expressly contemplates potential payment to Dugaboy and other residual equity holders. Rather than leaving Dugaboy and residual equity holder Hunter Mountain Investment Trust with no interest in the Claimant Trust, the Plan expressly includes residual equity holders in the definition of “Claimant Trust Beneficiaries” as follows:

“*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, **Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.**

Plan, § B, ¶ 27 (emphasis added). The Plan, in turn, makes clear that Dugaboy is a holder of

Class A Limited Partnership Interests. *Id.*, ¶ 33; *see also id.*, ¶¶ 24-26, 29-31 (describing the assets to be held by the Claimant Trust for the benefit of Claimant Trust Beneficiaries and the manner in which the Claimant Trust is to be operated).

18. In other words, under the Plan, after all allowed claims are paid in full plus interest, the assets of the trust and any payment from the operation of the Claimant Trust goes to Dugaboy (and Hunter Mountain, as a holder of Class B/C Partnership Interests). *Id.*, ¶¶ 33-36.

**E. There Is Credible Evidence Demonstrating That The Estate's Value Has Changed**

19. Since the entry of the Court's Plan Confirmation Order, the Debtor's financial outlook has changed, making the Amended Liquidation Analysis/Financial Projections on which the Court based its Plan Confirmation Order inapplicable. Indeed, there is every reason to believe that the value of the estate has changed markedly since Plan confirmation. Not only do many of the assets held by the estate fluctuate in value based on market conditions, but Dugaboy is aware that many of the major assets of the estate have been liquidated or sold since Plan confirmation, resulting in increased value to the estate.

20. Specifically, Dugaboy's information relating to estate value as of June 1, 2022 is as follows:

**Asset Values as of June 1, 2022 (in millions)**

Cash as of February 1, 2022		125.0
Proceeds from MGM Sale		25.0
Proceeds from CLO Distributions		37.5
Proceeds from Restoration Liquidation <sup>8</sup>		
MGM Sale	139.0	
CCS medical		
Sale	21.0	
Cornerstone (business sale)	100.0	
Cornerstone (MGM shares)	48.0	
Total:	308.0	
HCMLP Interest	16.7%	51.4
Proceeds from Multi-Strat Liquidation		55.0

**Total Cash as of June 1, 2022** **293.9**

**To be Monetized:**

Trussway	230.0
Remaining Harbourvest CLOs	37.5
Korea Fund	18.0
Celtic Litigation*	25.0
SE Multifamily*	20.0
Affiliate Notes*	50.0
Other	10.0

**Total to be Monetized** **390.5**

<b>Total Cash and Assets</b>	<b>684.4</b>
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\*Subject to dispute

21. Likewise, the total value of allowed claims has changed since Plan confirmation. The Debtor and Reorganized Debtor have settled some creditor claims and seen others dismissed, making estimates given during the Plan confirmation hearing obsolete.

22. Despite this evidence, the Debtor’s most recent sworn financial statement dated March 31, 2022, contains materially unchanged projections. *See* Dkt. 3325. This should raise

<sup>8</sup> Restoration documents provide for manager incentive fees, which could increase realizations to the estate.

alarm bells for the Court, particularly because the Debtor’s underlying assets naturally fluctuate in value and because the Debtor has engaged in the sale of virtually all major assets since confirmation.

23. Further, the post-confirmation reports filed by the Debtor do not provide any information to creditors regarding the prospect of payment and the expectation of future payment. Specifically, the report for the quarter ending March 31, 2022, reflects that only approximately \$6.9 million dollars has been paid to creditors, notwithstanding that the Reorganized Debtor and/or Claimant Trust are holding huge amounts of cash as a result of the asset sales reported above.

**E. Dugaboy’s Appellate Rights Are Compromised By Outdated Projections**

24. The Court’s repeated description of Dugaboy’s interest in the estate as “remote” is problematic for other reasons as well. As this Court is aware, Dugaboy has appealed several orders issued by the Court in HCMLP’s bankruptcy proceedings, both to the District Court for the Northern District of Texas and the Fifth Circuit Court of Appeals. *See, e.g.*, Case No. 22-10189 (5th Cir.); Case No. 21-90011 (5th Cir.); Case No. 21-cv-01295 (N.D. Tex.); Case No. 21-00546 (N.D. Tex.).

25. At least one of those appeals has been dismissed because the appellate court determined that Dugaboy lacked standing to pursue it. *See, e.g., Highland Capital Mgmt. Fund Advisors, L.P., et al. v. Highland Capital Mgmt., LP*, Case No. 3:21-cv-01895-D (N.D. Tex.), Dkt. 44, at 4. This Court’s prior finding that Dugaboy’s interest in the bankruptcy proceedings is “remote” and “contingent” no doubt played a role in these dismissals. In particular, the appellate courts have relied upon a Fifth Circuit decision—*In re Coho Energy*—which stands for the proposition that an appellant must possess an economic interest in the outcome of an

appeal that is not remote or contingent at the time the appeal is heard. Under *Coho*, a party that may have had standing at the time of filing its appeal under 11 U.S.C. § 1109 may be subjected to a higher and stricter standard for standing later in the appellate process.

26. Dugaboy has appealed the dismissal of one of its appeals to the Fifth Circuit Court of Appeals and has raised in its appellate briefing the wisdom and statutory basis for the Court's opinion in *Coho*. In particular, Dugaboy has argued that *Coho's* iteration of standing cannot be correct because the value of estate assets fluctuates during and after bankruptcy, such that the value of interests held by creditors and residual equity holders likewise fluctuates over time. Standing thus cannot be captured at a single point in time but must account for these potential fluctuations and acknowledge that fluctuations can place a particular party "in the money" such that decisions issued in bankruptcy can cause that party harm.

### **III. DUGABOY HAS STANDING IN THESE BANKRUPTCY PROCEEDINGS**

27. The Plan, on its face, gives Dugaboy an interest in the estate. Accordingly, and as this Court has acknowledged (*see* Plan Confirmation Order, ¶ 17), Dugaboy has standing to raise issues affecting the estate and Dugaboy's interest in it, including by filing the present motion seeking disclosure of the current value of assets held by the Claimant Trust. No other Court can hold the valuation hearing requested by Dugaboy.

28. First, Dugaboy has statutory standing to be heard and to object to actions taken by the Debtor and the Claimant Trustee in these bankruptcy proceedings. Specifically, the Bankruptcy Code gives any "party in interest" the right to participate in a debtor's chapter 11 proceedings. *See* 11 U.S.C. § 1109(b). While neither 11 U.S.C. § 1109(b) nor any other section in the Bankruptcy Code specifically defines the term "party in interest," section 1109(b) provides a non-exclusive list of entities that fall within the meaning of "party in interest" for the

purposes of a chapter 11 proceeding. *See Kipp Flores Architects, L.L.C. v. Mid-Continent Cas. Co.*, 852 F.3d 405, 413 (5th Cir. 2017). This non-exclusive list “broadly includes debtors, creditors, trustees, indenture trustees, and equity security holders.” *Id.* Other courts and authorities have similarly concluded that parties in interest “include not only the debtor, but anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.” *Adair v. Sherman*, 230 F.3d 890, 894 n. 3 (7th Cir. 2000); *see also* 4 COLLIER ON BANKRUPTCY ¶ 502.02 (16th ed. 2020) (“In the context of a chapter 11 case in particular, the term ‘party in interest’ expressly includes the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee.”).

29. Further, any party in interest may raise and may appear and be heard on any issue in a case under [Chapter 11].” 11 U.S.C. § 1109(b). Indeed, Section 1109(b) “has been construed to create a broad right of participation in Chapter 11 cases.” *In re Global Indus. Technologies, Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) (quoting *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 214 n.21 (3d Cir. 2004)).

30. Second, Dugaboy also has Article III standing to be heard in these bankruptcy proceedings. As the Supreme Court of the United States recently observed and held, Congress long ago abolished the requirement of a minimum amount in controversy for purposes of establishing related federal question jurisdiction. *See Uzuegbunam v. Preczewski*, \_\_\_ U.S. \_\_\_, 141 S. Ct. 792, 802 (2021) (“But Congress abolished the statutory amount-in-controversy requirement for federal question jurisdiction in 1980...And we have never held that one applies as a matter of constitutional law.”) (internal citation omitted). The absence of a minimum amount in controversy requirement under Section 1334 indicates that it should receive a parallel

construction. Indeed, in *Uzuegbunam*, the majority held that nominal damages or compensatory damages of one dollar (\$1.00) are sufficient to establish the redressability requirement under Article III.

31. As the court is aware, there is more than \$1 in controversy here. Indeed, depending upon how the estate is managed post-confirmation, Dugaboy stands to recover hundreds of thousands of dollars as a residual equity holder. And regardless of the amount of that recovery, Dugaboy has a very real interest in how the estate is managed by the Reorganized Debtor and the Claimant Trustee because that management will dictate whether and how much Dugaboy receives after payment of all creditors of the estate.

32. So, whether as a party in interest under 11 U.S.C. § 1109(b) or for purposes of Article III, Dugaboy has the requisite standing.

**IV. THE COURT SHOULD CONDUCT AN EVIDENTIARY HEARING REGARDING THE VALUE OF THE ESTATE AND THE ASSETS HELD BY THE CLAIMANT TRUST**

33. In addition to issuing a finding that Dugaboy has standing to appear, be heard, and object in these bankruptcy proceedings, the Court should conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and the Claimant Trustee of the value of the estate and all assets held by the Claimant Trust that are available for distribution to creditors and residual equity holders. At a minimum, the hearing would provide valuable information regarding:

- The cash held by the Reorganized Debtor and various entities controlled by the Reorganized Debtor;
- How the cash was acquired and, more specifically, what assets were sold or liquidated;
- How the amounts received for assets sold or liquidated compares to the projections made by the Debtor at the time of Plan confirmation;

- The value of estate assets still held for the benefit of the estate and its creditors, whether held by the Reorganized Debtor or the Claimant Trust;
- The post-confirmation expenses incurred or to be incurred pursuant to contractual obligations by the estate and its professionals;<sup>9</sup>
- The claims that must be paid prior to the interests of Dugaboy and Hunter Mountain springing into existence;
- Expected professional fees, based at a minimum on the post-confirmation engagement letter with Mr. Seery and/or the agreement entered into between the Debtor and Mr. Seery regarding post-confirmation management of the Debtor and Mr. Seery's compensation package to be paid by the estate.

34. Such a hearing would benefit not only Dugaboy in ascertaining the value of its current interest in the estate but also stands to benefit the estate and its creditors in two core ways. First, there are currently pending adversary proceedings seeking to recover value for HCMLP's estate, when no such additional value is necessary to pay creditors in full and which could be brought to a swift close, allowing creditors to be paid. Second, professionals associated with the estate—including but not limited to Mr. Seery, Pachulski, Development Specialists, Inc., Kurtzman Carson Consultants, Quinn Emanuel, Marc Kirschner, and Hayward & Associates—are continuing to incur millions of dollars a month in professional fees, thereby further eroding an estate that is either solvent or can be bridged by a settlement that would pay the spread between current assets and current allowed creditor claims. If at the hearing the Court finds that the estate is solvent or the spread is minimal, it can order mediation to settle the estate. Again, a quick resolution of all outstanding proceedings can only benefit the estate and its creditors.

35. The idea that the estate will incur an additional \$20+ million in legal fees and success bonuses when the estate can be finally resolved now should be of concern to the Court.

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<sup>9</sup> The Debtor's Post-Confirmation Report for the quarter ending March 31, 2022, shows total post-Effective Date disbursements by the estate of approximately \$81.9 million. *See* Dkt. 3325 at p. 2. The same Report projects additional expenditures of approximately \$211 million.

The Court should not encourage a repeat of the WRT case (which incidentally was managed by Golden & Associates and David Pauker, who is a member of the Oversight Board for the Claimant Trust).

36. Dugaboy is likewise concerned that very few distributions have been made thus far to creditors. Dugaboy recognizes that the various trust agreements provide great latitude to the Claimant Trustee, but the fact that allowed claims are incurring interest, and it is unknown whether the Claimant Trust is earning a return equal to that being incurred on creditor claims, is another cause for concern and a reason to require the Reorganized Debtor and the Claimant Trust to provide this information at an evidentiary hearing.

#### CONCLUSION

WHEREFORE, Dugaboy respectfully requests that the Court enter an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b) and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now, without further pursuing continued expensive and protracted litigation and without incurring additional enormous professional fees.

Dated: June 30, 2022

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, the undersigned, hereby certify that on June 30<sup>th</sup>, 2022, a true and correct copy of the above and foregoing was served via the Court's ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case as follows:

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/s/ Douglas S. Draper  
Douglas S. Draper

# EXHIBIT A

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

4 -----)

5 In Re: Chapter 11  
6 HIGHLAND CAPITAL Case No.  
7 MANAGEMENT, LP, 19-34054-SGJ 11

8

9 Debtor

10 -----

11

12

13 REMOTE DEPOSITION OF JAMES P. SEERY, JR.

14 January 29, 2021

15 10:11 a.m. EST

16

17

18

19

20

21

22

23

24 Reported by:  
Debra Stevens, RPR-CRR  
JOB NO. 189212

25

1 J. SEERY

2 Q. Excuse me?

3 A. I believe it does.

4 Q. Is there a subsidiary ledger  
5 that would tell me what is the note  
6 component versus what is the hard asset  
7 component?

8 A. Yes.

9 Q. Who has that?

10 A. I do.

11 MR. DRAPER: Mr. Morris, can I  
12 get that document?

13 MR. MORRIS: I will take it  
14 under advisement.

15 Q. There is also a Dugaboy note in  
16 your notes that is to be sold. Is that  
17 Dugaboy note in the \$40 million, or is it  
18 in the hard asset monetization?

19 A. I believe it is in the -- it is  
20 to be sold, so it is not collected in  
21 full. If they default, then we would  
22 accelerate that and collect that in full  
23 as well.

24 Q. That doesn't answer my question  
25 unfortunately. What I am asking you, is

1 J. SEERY

2 it in the \$40 million calculation, or in  
3 the \$200 million number?

4 A. It doesn't answer your question  
5 because you didn't listen to my prior  
6 answer. I said that the 40 million  
7 calculation was for stuff that had been  
8 demanded. I think you represent -- do you  
9 represent Dugaboy? I don't think we  
10 demanded --

11 Q. I do. Excuse me?

12 A. So if it wasn't demanded, it is  
13 not in the hard asset calculation; it's in  
14 the discounted amount.

15 Q. Let me try to understand your  
16 answer. What you are telling me, just so  
17 we are both clear, is that that Dugaboy  
18 note is not in the \$40 million; it is in  
19 the balance of the 257? That is a yes or  
20 no answer.

21 A. I didn't take it as a question.  
22 It sounded like a statement. I agree with  
23 your statement.

24 Q. Thank you. So the answer is  
25 yes?

1 J. SEERY

2 A. It wasn't a question. I agree  
3 with your statement; yes.

4 Q. Thank you.

5 Now, let's go to the  
6 November 2020 schedule that we had. If  
7 you see in the line "Estimated proceeds  
8 from monetization of assets," you had  
9 \$190 million under the plan analysis?

10 A. Yes.

11 Q. What percentage of that are  
12 notes versus hard assets?

13 A. The demand notes only were  
14 included in the proceeds in terms of  
15 recovery in full. I don't quite  
16 understand your distinction between hard  
17 assets. There is a lot of intangibles as  
18 well as tangibles in the total.

19 But if we are distinguishing  
20 between notes and other assets, the demand  
21 notes are included in the 190. The longer  
22 dated notes are assumed to be sold. So,  
23 they are included but they are included at  
24 a much lower amount.

25 Q. Okay. Now how much of the

1 J. SEERY

2 demand notes in the 190, Mr. Seery?

3 A. Off the top of my head I don't  
4 recall. It is the Dondero demand notes as  
5 well as the HCFMA demand notes, so it  
6 should be about 15 to \$20 million.  
7 Somewhere in that realm. The same as the  
8 other demand notes.

9 Q. Were the other notes, the  
10 \$40 million of notes that you referenced  
11 in the January document, were they carried  
12 at face or at discounted amount in the  
13 190?

14 A. In the 190, the ones that were  
15 demand were carried at face. The ones  
16 that were long dated, which really at that  
17 point I believe -- the only difference is  
18 the \$24-and-change-million NexPoint  
19 Advisors note was at a discounted amount.  
20 The others were at face.

21 Q. What was the discount that was  
22 applied to that note?

23 A. I don't recall off the top of my  
24 head. It is pretty significant because of  
25 the long dated nature of the notes. They

1

J. SEERY

2 were amended without consideration a few  
3 years ago. So, for our purposes we didn't  
4 make the assumption, which I am sure will  
5 happen, a fraudulent conveyance claim on  
6 those notes, that a fraudulent conveyance  
7 action would be brought. We just assumed  
8 that we'd have to discount the notes  
9 heavily to sell them because nobody would  
10 respect the ability of the counterparties  
11 to fairly pay.

12 Q. And the same discount was  
13 applied in the liquidation analysis to  
14 those notes?

15 A. Yes.

16 Q. Now --

17 A. The difference -- there would be  
18 a difference, though, because they would  
19 pay for a while because they wouldn't want  
20 to accelerate them. So there would be  
21 some collections on the notes for P and I.

22 Q. But in fact as of January you  
23 have accelerated those notes?

24 A. Just one of them, I believe.

25 Q. Which note was that?

1 J. SEERY

2 A. NexPoint, I said. They  
3 defaulted on the note and we accelerated  
4 it.

5 Q. So there is no need to file a  
6 fraudulent conveyance suit with respect to  
7 that note. Correct, Mr. Seery?

8 MR. MORRIS: Objection to the  
9 form of the question.

10 A. Disagree. Since it was likely  
11 intentional fraud, there may be other  
12 recoveries on it. But to collect on the  
13 note, no.

14 Q. My question was with respect to  
15 that note. Since you have accelerated it,  
16 you don't need to deal with the issue of  
17 when it's due?

18 MR. MORRIS: Objection to the  
19 form of the question.

20 A. That wasn't your question. But  
21 to that question, yes, I don't need to  
22 deal with when it's due.

23 Q. Let me go over certain assets.  
24 I am not going to ask you for the  
25 valuation of them but I am going to ask

1 J. SEERY

2 you whether they are included in the asset  
3 portion of your \$257 million number, all  
4 right? Mr. Morris didn't want me to go  
5 into specific asset value, and I don't  
6 intend to do that.

7 The first question I have for  
8 you is, the equity in Trustway Highland  
9 Holdings, is that included in the  
10 \$257 million number?

11 A. There is no such entity.

12 Q. Then I will do it in a different  
13 way. In connection with the sale of the  
14 hard assets, what assets are included in  
15 there specifically?

16 A. Off the top of my head -- it is  
17 all of the assets, but it includes  
18 Trustway Holdings and all the value that  
19 flows up from Trustway Holdings. It  
20 includes Targa and all the value that  
21 flows up from Targa. It includes CCS  
22 Medical and all the value that would flow  
23 to the Debtor from CCS Medical. It  
24 includes Cornerstone and all the value  
25 that would flow from Cornerstone. It

1 J. SEERY

2 includes any other securities and all the  
3 value that would flow from Cornerstone.

4 It includes HCLOF and all the value that  
5 would flow up from HCLOF. It includes  
6 Korea and all the value that would flow up  
7 from Korea.

8 There may be others off the top  
9 of my head. I don't recall them. I don't  
10 have a list in front of me.

11 Q. Now, with respect to those  
12 assets, have you started the sale process  
13 of those assets?

14 A. No. Well, each asset is  
15 different. So, the answer is, with  
16 respect to any securities, we do seek to  
17 sell those regularly and we do seek to  
18 monetize those assets where we can  
19 depending on whether there is a  
20 restriction or not and whether there is  
21 liquidity in the market.

22 With respect to the PE assets or  
23 the companies I described -- Targa, CCS,  
24 Cornerstone, JHT -- we have not --  
25 Trustway. We have not sought to sell

1 J. SEERY

2 Q. And if I understand what you  
3 just said, it is that the Houlihan Lokey  
4 valuation for those two businesses showed  
5 a significant increase between November of  
6 2020 and January of 2021?

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

9 A. I didn't say that.

10 Q. I am trying to account for the  
11 increase between the two dates, and you  
12 identified three assets. You identified  
13 MGM stock, which has, I can guess, as you  
14 have said, a readily ascertainable value.  
15 Then you identified two others that the  
16 valuation is based upon something Houlihan  
17 Lokey provided you. Correct?

18 A. I gave you three examples. I  
19 never said "readily." That is your word,  
20 not mine. And I didn't say that Houlihan  
21 had a significant change in their  
22 valuation.

23 Q. So let's now go back to the  
24 question. There is an increase in value  
25 from November 24th of 2020 to January 28th

1 J. SEERY

2 of 2021, the magnitude being roughly 60  
3 some odd million dollars. Correct?

4 A. Correct.

5 Q. We can account for \$22 million  
6 of it easily, right?

7 MR. MORRIS: Objection to form.

8 A. Correct.

9 Q. That is the HarbourVest  
10 settlement, so that leaves roughly  
11 \$40 million unaccounted for?

12 MR. MORRIS: Objection to the  
13 form of the question if that is a  
14 question. It is accounted for.

15 Q. What makes up that difference,  
16 Mr. Seery?

17 A. A change in the plan value of  
18 the assets.

19 Q. Okay. Which assets? Let's sort  
20 of go back to where we were.

21 A. There are numerous assets in the  
22 plan formulation. I gave you three  
23 examples of the operating businesses. The  
24 securities, I believe, have increased in  
25 value since the plan, so those would go up

1 J. SEERY

2 for one. On the operating businesses, we  
3 looked at each of them and made an  
4 assessment based upon where the market is  
5 and what we believe the values are, and we  
6 have moved those valuations.

7 Q. Let me look at some numbers  
8 again. In the liquidation analysis in  
9 November of 2020, the liquidation value is  
10 \$149 million. Correct?

11 A. Yes.

12 Q. And in the liquidation analysis  
13 in January of 2021, you have \$191 million?

14 A. Yes.

15 Q. You see that number. So there  
16 is \$51 million there, right?

17 A. No.

18 Q. What is the difference between  
19 191 and -- sorry. My math may be a little  
20 off. What is the difference between the  
21 two numbers, Mr. Seery?

22 A. Your math is off.

23 Q. Sorry. It is 41 million?

24 A. Correct.

25 Q. \$22 million of that is the

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter  
Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

**Volume 3**

**APPELLANT RECORD**



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

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

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

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

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

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

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

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

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DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

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

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

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

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

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

In re:

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Case No. 19-34054-sgj11

Reorganized Debtor.

**REORGANIZED DEBTOR'S OBJECTION TO  
MOTION FOR DETERMINATION OF VALUE**

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Highland Capital Management, L.P., the reorganized debtor in the above-captioned case (“**Highland**” or the “**Debtor**,” as applicable), objects to the *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382] (the “**Valuation Motion**”) filed by The Dugaboy Investment Trust (“**Dugaboy**”).

**PRELIMINARY STATEMENT**<sup>2</sup>

1. Prior to the Effective Date, Dugaboy owned 0.1866% of the Debtor’s total equity.

However, Dugaboy currently has no interest in the post-Effective Date estate and will receive no

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<sup>1</sup> The last four digits of Highland’s taxpayer identification number are 8357. Highland’s headquarters and service address is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not defined in this Preliminary Statement have the meanings given to them below.

distributions unless and until unsecured creditors have been paid in full with interest and senior equity has been satisfied. Yet, Dugaboy seeks an evidentiary hearing and “a determination by this Court of the current value of the estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors,” all so it could ostensibly determine whether its *de minimis*, subordinated equity interest in the Claimant Trust is in the money. The Valuation Motion should be denied for several independent reasons.

2. **First**, Dugaboy has no right to obtain the confidential and sensitive valuation information it seeks. Dugaboy cites to no law, rule, or precedent authorizing this Court to direct Highland to turn over such information, nor does Dugaboy contend that it has any right to obtain this information under the Plan, the Claimant Trust Agreement, or any other Plan document (and, for the avoidance of doubt, it does not). The sole “evidence” in the Valuation Motion is Dugaboy’s speculation as to the value of the Highland Entities’ assets.<sup>3</sup> Such musings create no rights.

3. **Second**, Dugaboy seeks Highland’s valuation information for an improper purpose—to try and create standing it did not have when it commenced numerous appeals of this Court’s orders. Regardless of whether Dugaboy might be “in the money” now or in the future, the law in the Fifth Circuit is that standing is determined when a proceeding is commenced. Consequently, Dugaboy cannot use the results of the Valuation Motion to retroactively create standing that it previously lacked.

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<sup>3</sup> Dugaboy’s views of the purported value of the Highland Entities’ assets (Valuation Motion ¶ 20) are notable for several reasons. **First**, Dugaboy’s “valuations” are not supported by any evidence; they are simply numbers in a legal brief. **Second**, Dugaboy’s “analysis” ascribes nearly \$100 million in value to assets Mr. Dondero and his related entities are baselessly litigating. **Third**, and perhaps most tellingly, if Dugaboy was actually interested in preserving the value of the Claimant Trust’s assets, it would *never* have publicly disclosed its own valuations as that could jeopardize the integrity of the Highland Entities’ marketing process and efforts to maximize value (and the Highland Entities reserve all rights in that regard).

4. **Third**, Dugaboy’s assumption that it will be “in the money” if the assets are liquidated for sufficient proceeds to pay senior creditor and equity classes is faulty. Regardless of the value at which the assets are monetized, creditors and senior equity holders will not be paid in full until the threat of Mr. Dondero’s continued pursuit of his “litigation strategy” ends. The Claimant Trust will not distribute all proceeds from the Highland Entities’ assets until that time because material indemnification obligations will remain.

5. **Finally**, the Valuation Motion is procedurally improper. Bankruptcy Rule 7001(2) requires that the determination of Dugaboy’s interest in the Highland Entities’ assets (if any) be adjudicated as part of an adversary proceeding, and Dugaboy must satisfy the elements necessary to secure such relief.

6. For these reasons, and those set forth below, the Court should deny the Valuation Motion.

### **BACKGROUND TO THE OBJECTION**

7. On October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “**Bankruptcy Case**”). The Bankruptcy Case was subsequently transferred to this Court on December 4, 2019.

8. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “**Confirmation Order**”),<sup>4</sup> which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket

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<sup>4</sup> On August 19, 2022, the United States Court of Appeals for the Fifth Circuit affirmed the Confirmation Order in relevant part. Case No. 21-10449, Document 00516439341.

No. 1808] (the “**Plan**”). The Plan became effective on August 11, 2021 [Docket No. 2700] (the “**Effective Date**”).

9. On the Effective Date, all prepetition equity interests in Highland, including Dugaboy’s *de minimis* interest, were canceled. New limited partnership interests were issued to the Highland Claimant Trust<sup>5</sup> (the “**Claimant Trust**,” and together with Highland, the “**Highland Entities**”), and beneficial interests in the Claimant Trust were issued to Highland’s prepetition general unsecured creditors in Class 8 (General Unsecured Claims) and Class 9 (Subordinated Claims). Highland’s assets were either transferred to the Claimant Trust or remained at Highland for monetization.

#### **DUGABOY HAS NO RIGHT TO THE INFORMATION IT SEEKS**

10. Dugaboy seeks confidential financial information about the value of the Highland Entities’ assets, but, as Dugaboy implicitly admits, it has no legally cognizable right to such information, regardless of the purpose for which it is being sought.

11. Dugaboy does not—and cannot—cite to a statute, rule, or judicial opinion authorizing this Court to grant the relief it seeks. Moreover, Dugaboy does not claim to be a beneficiary of the Claimant Trust, and it is not. Nor does Dugaboy contend—because it cannot—that it has any right under the Plan, the Claimant Trust Agreement, or any of their related agreements and documents to the information it seeks. Indeed, even actual beneficiaries of the Claimant Trust have no right to the information Dugaboy demands.<sup>6</sup>

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<sup>5</sup> The Claimant Trust is governed by that certain Claimant Trust Agreement, effective as of August 11, 2021 (the “**CTA**”). A true and accurate copy of the CTA is attached hereto as **Exhibit A**. The CTA was expressly incorporated into and is a part of the Plan. Confirmation Order ¶ 25; Plan Art. IV, § J.

<sup>6</sup> Section 3.12(b) of the CTA provides Claimant Trust beneficiaries with limited information rights; however, the Claimant Trustee may “redact any portion of such reports ...” to protect confidential information. CTA, § 3.12(b).

12. Because Dugaboy has no right to “an accounting” or to any of the confidential financial information it seeks (nor would it even if it were a Claimant Trust beneficiary), the Court should deny the Valuation Motion.

**DUGABOY’S MOTION WAS FILED FOR AN IMPROPER PURPOSE**

13. Irrespective of whether Dugaboy has a right to the information it seeks, the Valuation Motion was filed for an improper purpose, and therefore any “equitable” claim to Highland’s valuation information should be rejected.<sup>7</sup>

14. By Dugaboy’s own admission, the intended purpose of the Valuation Motion is to establish Dugaboy’s appellate standing: “All of this information is critical to ascertaining what the estate is capable of paying to creditors now or in the near-term and whether a remainder will be left for the residual equity holders.”<sup>8</sup>

15. However, Dugaboy’s standing has already been adjudicated by each court to which it has appealed this Court’s orders, and each appellate court determined Dugaboy lacked standing

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<sup>7</sup> Dugaboy is particularly ill-suited to pursue the Valuation Motion. As the evidence showed at a recent hearing, one of the many secretly transferred assets out of a Highland-controlled fund was a \$2.39 million promissory note from The Dugaboy Investment Trust. The evidence also showed that, following the Petition Date, Matthew D’Orio (a former employee of the Highland legal department who went to work for “Skyview” following his termination) secretly caused Sentinel to transfer that note (along with, among other things, a \$32.8 million CLO Holdco note) to Sebastian Clarke Ltd. (another entity apparently owned by Dondero and Ellington) because the notes were supposedly “worthless.” It appears that CIMA prevented any further transfers of the notes and required that the notes and other assets be returned to Sentinel. *See* Adv. Pro. No. 21-03030, Docket Nos. 11, 15.

<sup>8</sup> Valuation Motion at 8, Section E at 12 *et seq.*

under the “person aggrieved” test<sup>9</sup> because its interest in the estate was speculative, at best.<sup>10</sup> Having been stymied by the appellate courts, Dugaboy comes back to *this* Court—obviously not an appellate court—attempting to establish that it has a non-speculative, non-remote, more-than-theoretical pecuniary interest in the outcome of the appeals it has taken so it can take such a ruling to an appellate court and convince it to reverse a prior ruling that no such standing exists. The Court should see this ploy for what it is—jurisdictional gamesmanship to try to create more obfuscating, baseless litigation.

16. **Whether Dugaboy Is “In the Money” Is Irrelevant to Current and Future Appeals.** Dugaboy’s appellate standing is immaterial to the Dondero entities’ many appeals. For example: (1) Highland never challenged Dugaboy’s standing in the Fifth Circuit appeal of the Confirmation Order, so standing was never before the Fifth Circuit in that appeal (and that appeal has now been disposed of in any event); (2) Highland has acknowledged in its latest briefing to the Fifth Circuit in the Indemnity Sub-Trust appeal that Dugaboy’s standing is immaterial because Dondero-controlled NexPoint retains standing to pursue that appeal;<sup>11</sup> and (3) the District Court’s dismissal of Dugaboy affiliate NexPoint’s appeal of this Court’s final professional fee orders (now itself on appeal to the Fifth Circuit) was based on *NexPoint’s* lack of standing, not Dugaboy’s.<sup>12</sup>

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<sup>9</sup> See, e.g., *Order, The Dugaboy Inv. Tr., et al., v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, Case No. 3:21-cv-02268-S, Docket No. 21 (N.D. Tex. Aug. 8, 2022) (“**2015.3 Order**”) (“The Fifth Circuit applies the ‘person aggrieved’ test, which imposes a ‘more exacting standard than traditional constitutional standing.’ ... The ‘person aggrieved’ test ‘demands a higher causal nexus between act and injury,’ and requires an appellant to show that she is ‘directly and adversely affected pecuniarily by the order of the bankruptcy court’”) (citations omitted).

<sup>10</sup> *Opinion, Highland Cap. Mgmt. Fund Advisors, L.P., et al. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, Civil Action No. 3:21-cv-1895-D, Docket No. 44, 45 (N.D. Tex. Jan. 28, 2022) (“**Indemnity Trust Order**”) (“Dugaboy lacks standing. It has a contingent interest that will only be paid if all other creditors are paid in full ... Dugaboy’s expected return is therefore \$0 both before and after entry of the Order. Accordingly it lacks standing”); 2015.3 Order at 4-5. Dugaboy has appealed the District Court’s dismissal of its appeal of this Court’s order approving the Indemnity Sub-Trust for lack of standing. *Highland Cap. Mgmt. Fund Advisors, L.P., NexPoint Advisors, L.P., and The Dugaboy Inv. Tr. v. Highland Cap. Mgmt., L.P.*, Fifth Circuit Court of Appeals Case No. 22-10189.

<sup>11</sup> *Appellee’s Brief*, Case No. 22-10189, Document No. 00516388021 (5th Cir. Jul. 8, 2022).

<sup>12</sup> *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones LLP*, Case No. 22-10575 (5th Cir. June 23, 2022).

**17. This Court Lacks Jurisdiction to Determine Dugaboy’s Appellate Standing.**

Even if Dugaboy’s approach were not futile, the issue of Dugaboy’s standing cannot be determined by this Court because Dugaboy has put the issue of its standing squarely before the Fifth Circuit Court of Appeals in at least one appeal<sup>13</sup> (and will likely do so again when it appeals Judge Starr’s dismissal of Dugaboy’s Rule 2015.3 appeal, again for lack of standing, just days ago). This Court, respectfully, lacks jurisdiction over that issue while the issue is being litigated before the Fifth Circuit.<sup>14</sup>

**18. This Court Cannot Retroactively Create Appellate Standing for Dugaboy.**

Even if this Court had jurisdiction, any relief the Court could grant Dugaboy would be meaningless. It is axiomatic that if an appellant lacked standing at the time an appeal was taken, subsequent events cannot cure that deficiency because—although an appellant can subsequently lose standing—whether an appellant affirmatively has standing is established at the time the appeal begins. “Standing is ‘determined as of the commencement of the suit.’ ... Timing matters, though, and [appellant] cannot belatedly claim creditor status and establish standing retroactively.”<sup>15</sup> Because Fifth Circuit precedent precludes Dugaboy from retroactively establishing appellate standing by citing events occurring *after* Dugaboy’s appeals, whether recent developments will enable Dugaboy to establish that it is now more likely to become a Claimant Trust beneficiary sometime in the future is irrelevant to Dugaboy’s appellate standing. Accordingly, any attempt to address an appellate shortcoming in this Court is futile and should be denied.

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<sup>13</sup> See Indemnity Trust Order.

<sup>14</sup> See, e.g., *In re Transtexas Gas Corp.*, 303 F.3d 571, 579-80 (5th Cir. 2002) (“It is a fundamental tenet of federal civil procedure that—subject to certain, defined exceptions—the filing of a notice of appeal from the final judgment of a trial court divests the trial court of jurisdiction and confers jurisdiction upon the appellate court”); *In re Age Refin., Inc.*, 505 B.R. 447, 451 (Bankr. W.D. Tex. 2014) (“When a matter is appealed from a bankruptcy court, the bankruptcy court loses jurisdiction over the subject matter of the appeal ...”)

<sup>15</sup> *Furlough v. Cage (In re Technicool Sys.)*, 896 F.3d 382, 386 (5th Cir. 2018); see also *2015.3 Order* at 4 (“Standing must exist both at the commencement of the litigation and throughout its existence.”)

19. To the extent Dugaboy seeks this information for future appeals, its request is still irrelevant; there is nothing left for Dugaboy to appeal.

20. Thus, even taking Dugaboy's request for valuation information at face value, Dugaboy's use of that information to establish a higher likelihood that it will someday receive a beneficial interest in the Claimant Trust is irrelevant. Dugaboy cannot legally recreate its appellate standing in prior appeals, and its standing is irrelevant to the currently pending appeals. The Valuation Motion should be denied.

### **THE INFORMATION SOUGHT BY DUGABOY IS IRRELEVANT**

21. More fundamentally, the information Dugaboy seeks in the Valuation Motion cannot answer the question of whether Dugaboy is "in the money" and is therefore irrelevant.

22. Regardless of prior sales and current asset values, the Claimant Trustee can never distribute enough cash to creditors to put prepetition equity-holders like Dugaboy "in the money" because of the ever-present, highly-credible threat that Mr. Dondero and his entities will perpetuate their "culture of litigation" and sue the post-effective date entities, including the Highland Entities, and people working on their behalf.<sup>16</sup> Because the Highland Entities and the Highland Litigation Sub-Trust must indemnify those that work for them for suits brought against them, and because sufficient cash must be reserved at the Highland Entities, the Litigation Sub-Trust, or the Indemnity Sub-Trust to satisfy those potentially significant indemnification obligations, the Claimant Trustee will likely never distribute sufficient cash from the Claimant Trust to its creditor beneficiaries to put prepetition equity-holders like Dugaboy "in the money."<sup>17</sup>

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<sup>16</sup> This Court should take serious that threat, which has already manifested itself in the filing of three complaints.

<sup>17</sup> A description of the post-Effective Date entities' indemnification obligations and their ability to reserve for them is discussed further in *Debtor's Motion for Entry of an Order (i) Authorizing the (a) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* [Docket No. 2491] and *Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (a) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* [Docket No. 2576].

23. The only way out of this conundrum is for Mr. Dondero (and all entities he directly or indirectly owns and/or controls and/or has a beneficial interest in) to give Highland, the Claimant Trust, the Litigation Sub-Trust, and their respective management a general release of all known and unknown claims subject to indemnification (or to have those claims resolved by final order, which will come at significant cost to the Highland Entities).<sup>18</sup> Only in that circumstance, and after monetizing the remaining assets, could the Claimant Trust hypothetically make distributions that would satisfy general unsecured claims in full with interest. Consequently, solvency and unrealized asset values are simply irrelevant.<sup>19</sup>

### **THE VALUATION MOTION IS PROCEDURALLY IMPROPER**

24. Finally, the Valuation Motion is procedurally improper and, ultimately, unnecessary. Dugaboy articulates what it wants in Section IV of the Valuation Motion<sup>20</sup>—an evidentiary hearing regarding the value of the Highland Entities’ assets. For the reasons set forth above, that request is irrelevant, but, even if it were not, Dugaboy has chosen an improper procedure to seek that relief, insofar as the relief may only be the subject of an adversary proceeding. Seeking to determine the extent of Dugaboy’s interest in Claimant Trust assets is

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<sup>18</sup> Dugaboy contends that the “Reorganized Debtor has reported that it has paid professionals nearly \$70 million since the Effective Date of the Plan,” what it characterizes as an “enormous burn” rate. Valuation Motion at 1. Highland could prove that Dugaboy’s contentions are inaccurate if they were relevant to the resolution of the Valuation Motion. More fundamentally, however, Dugaboy’s gripes ignore the fact that Highland has incurred (and will continue to incur) substantial professional fees litigating against Mr. Dondero and the entities in which he has an interest and/or controls (*e.g.*, the dozens of appeals of this Court’s orders to the District Court and the Fifth Circuit Court of Appeals; Mr. Dondero’s continued efforts to delay and impede Highland from recovering on over \$60 million owed under simple demand notes, the repayment of which remains a critical component of general unsecured creditors’ recoveries; the baseless claim filed by HCRE Partners, LLC that HCRE now abruptly seeks to withdraw; and the pre-petition fraudulent transfer of over \$100 million to Sentinel, and the post-petition cover-up and use of assets controlled by the estate).

<sup>19</sup> Dugaboy has suggested that the information it seeks aid in a global settlement. But the Valuation Motion is a particularly odd to go about pursuing a settlement; if Mr. Dondero has any interest in resolving this case, he should go about it by means other than litigation.

<sup>20</sup> Oddly, the entire Section III of the Valuation Motion is devoted to something that Highland has never disputed and does not dispute now—that Bankruptcy Code section 1109 confers party-in-interest standing on Dugaboy to participate in proceedings in this Court (prudential and constitutional standing for appeals is, of course, an entirely different matter).

precisely the type of action required to be brought as an adversary proceeding under Bankruptcy Rule 7001(2): “a proceeding to determine the ... extent of [an] ... interest in property ....”

### CONCLUSION

25. For these reasons, and to prevent further harmful incursions into the carefully-executed marketing and liquidation of the Highland Entities’ assets by a deeply subordinated prepetition equity-holder bent on making mischief, the Court should deny the Valuation Motion.<sup>21</sup>

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<sup>21</sup> If, for whatever reason, the Court believes an evidentiary hearing is appropriate, Highland respectfully requests that the Court conduct that hearing in January 2023 when Highland expects to be closer to the completion of its asset monetization plan. Highland would request that any review of the evidence presented at the hearing be done *in camera*.

Dated: August 24, 2022

**PACHULSKI STANG ZIEHL & JONES LLP**

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## **EXHIBIT A**

## CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and Wilmington Trust, National Association, a national banking association (“WTNA”), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

### **DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.4(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

**ARTICLE II.**  
**ESTABLISHMENT OF THE CLAIMANT TRUST**

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

### 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

#### 2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

**ARTICLE III.**  
**THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the “Authorized Acts”).

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee’s authority with respect to certain other assets, including certain portfolio company assets (the “Other Assets”).

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder’s Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the “Interim Trustee”) until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person’s appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee’s capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as “Estate Representative”. The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

### 3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

#### 4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

#### 4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

## ARTICLE V. TRUST INTERESTS

### 5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

#### 5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

**ARTICLE VI.**  
**DISTRIBUTIONS**

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

## ARTICLE VII. TAX MATTERS

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## ARTICLE VIII. STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## **ARTICLE IX.** **TERMINATION**

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

## **ARTICLE X.** **AMENDMENTS AND WAIVER**

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o Highland Capital Management, L.P.  
100 Crescent Court, Suite 1850  
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association  
1100 North Market Street  
Wilmington, DE 19890  
Attn: Corporate Trust Administration/David Young  
Email: nmarlett@wilmingtontrust.com  
Phone: (302) 636-6728  
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

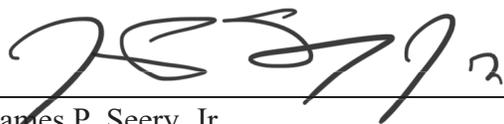
11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however,* that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By:   
James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By:   
James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,  
as Delaware Trustee

By: NC Marlett III  
Name: Neumann Marlett  
Title: Bank Officer

**KELLY HART PITRE**  
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Telecopier: (817) 878-9280

**COUNSEL FOR HUNTER MOUNTAIN INVESTMENT TRUST**

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

<b>In re:</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor</b>	§	<b>Relates to Dkt. No. 3382</b>
	§	

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**LIMITED RESPONSE IN SUPPORT OF CERTAIN REQUESTED RELIEF**

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Hunter Mountain Investment Trust (“Hunter Mountain”) files this *Limited Response in Support of Certain Requested Relief* (the “Response”) in connection with the *Motion For Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Dkt. No. 3382] (the “Motion for Valuation”) filed by the Dugaboy Investment Trust (“Dugaboy”) and supports Dugaboy’s request for information from the reorganized debtor (“HCMLP”) and the Claimant Trust, as defined in the *Fifth Amended Plan of Reorganization of Highland Capital Management,*

*L.P.* (as modified) [**Dkt. No. 1943**] (the “Plan”),<sup>1</sup> regarding the value of the Reorganized Debtor Assets and Claimant Trust Assets, as well as the outstanding Class 8 and 9 Claims.

## SUMMARY

1. Hunter Mountain believes that no Professional, Claimant Trust Beneficiary, nor this Court would support the idea that the Plan provides that the Litigation Sub-Trust should pursue litigation against Holders of Equity Interest to generate a recovery with which to pay distributions to those same Holders of Equity Interest, less the costs of that litigation. Yet, given the allegations in the Motion for Valuation and general lack of transparency into the Reorganized Debtor Assets, Claimant Trust Assets, and outstanding obligations that must be resolved, including the Class 8 and 9 Claims, Hunter Mountain—as both a Holder of Class 10 - Class B/C Limited Partnership Interests and a defendant in the Kirschner Adversary Proceeding<sup>2</sup>—is concerned that this could occur in this case. Therefore, Hunter Mountain submits that to best effectuate the Plan, HCMLP and the Claimant Trust should work with Holders of Equity Interests, like Hunter Mountain, to provide transparency into the value of the Reorganized Debtor Assets and Claimant Trust Assets and outstanding Class 8 and 9 Claims.

## BACKGROUND

### A. Hunter Mountain holds a Contingent Claimant Trust Interest

2. HCMLP is a Delaware limited partnership. As of the Petition Date, HCMLP had three classes of limited partnership interest (Class A, Class B, and Class C). *See* Disclosure

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<sup>1</sup> Capitalized terms not otherwise defined herein take their meaning from the Plan.

<sup>2</sup> *See Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust vs. Dondero et al* [Adv. Pro. No. 21-03076-sgj]

Statement [Dkt. No. 1473], ¶F(4). The Class A interests were held by Dugaboy, Mark Okada (“Okada”), personally and through family trusts, and Strand Advisors, Inc. (“Strand”), HCMLP’s general partner. The Class B and C interests were held by Hunter Mountain. *Id.* In the aggregate, HCMLP’s limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by Dugaboy, (c) 0.0627% by Okada, and (d) 0.25% by Strand. *Id.*

3. In the Plan, HCMLP classified Hunter Mountain’s Class B Limited Partnership Interest and Class C Limited Partnership Interest (together, Class B/C Limited Partnership Interests) as Class 10, separately from that of the holders of Class A Limited Partnership Interests which are Class 11. *See* Plan, Article III, ¶H(10) and (11). According to the Plan, Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests are be subordinate to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests. *See* Plan, Article I, ¶44.

4. In the Confirmation Order, the Court found that the Plan properly separately classified those Equity Interests because they represent different types of equity security interests in HCMLP and different payment priorities pursuant to that certain *Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended* (the “Limited Partnership Agreement”). Confirmation Order, ¶36; Limited Partnership Agreement, §3.9 (Liquidation Preference).

5. The Plan created the Claimant Trust which was established for the benefit of Claimant Trust Beneficiaries, which is defined to mean:

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full,

post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests

*See* Plan, Article I, ¶27. Therefore, Hunter Mountain holds a Contingent Claimant Trust Interest which will vest into Claimant Trust Interests upon indefeasible payment of Allowed Claims.

6. Therefore, depending on the realization of asset value less debts, Hunter Mountain may become a Claimant Trust Beneficiary.

7. In other words, the status of the Bankruptcy Case is a liquidation, and there are assets including (this is a generalization) cash, ownership interests in entities, investments into entities and funds, perhaps real estate, and litigation claims (“Assets”). There are obligations, including the Exit Facility, Allowed Claims, obligations to Indemnified Parties, etc. Further, there are ongoing (and we assume material) administrative and litigation costs, and obligations arising under the Plan for payment of various success fees, etc., to various persons in connection with the liquidation (collectively, the “Obligations”).

8. Hunter Mountain is “in the money” if the Assets are greater than the Obligations.

9. Further, Hunter Mountain and perhaps other persons and entities could have incentive to discuss with HCMLP and the Claimant Trust the prospect of an overall resolution if it could obtain some level of clarity as to the value of the assets and the amount of the Obligations. Information could facilitate discussion. For example, Hunter Mountain assumes that while the Exit Facility has repayment obligations that must be made on an ongoing basis, the obligations to Indemnified Parties and the necessity of payment of ongoing administrative and litigations costs may cause a postponement of distributions to Holders of Allowed Claims, creating a circle whereby Allowed Claims are not paid, the value of current assets is being used, so that the Asset

over Obligations ratio is currently decreasing. So as time passes, the value of Assets is decreasing, which requires reliance upon litigation claims to replace such diminution.

10. So, even if there is a deficit of Assets over Obligations, knowledge of the amount of such a deficit, with information about assets remaining, could generate a picture of a current deficit, and better the possibility of a resolution that could create a maximization of the Asset value and a capping of the Obligations (for example, in a resolution situation there would be no obligations to Indemnified Parties so any reserve could be utilized free of such obligations; and no further need for projection and payment of administrative and litigation costs so no growing deficit).

**B. Holders of Contingent Claimant Trust Interests have no insight into the value of the Assets or amount of Obligations.**

11. While whether Hunter Mountain's Contingent Claimant Trust Interest will vest into a Claimant Trust Interest is dependent upon the Asset value over Obligations amount, Hunter Mountain has little to no insight into what these values may be and no method to independently ascertain them.

12. HCMLP and the Claimant Trust file quarterly post-confirmation reports, but these reports do not provide the relevant information related to the true Asset value versus the Obligations. These reports state that all Claims in Classes 6 and 7 were paid in full and that Classes 8 and 9 have received non-cash distributions in to and form of Claimant Trust Interests and therefore any distributions to holders of Class 8 and Class 9 claims will be made by the Claimant Trust. *See* Dkt. No. 3409-1. But the Claimant Trust has made no distributions to Claimant Trust Beneficiaries. *See* Dkt. No. 3410-1. Further Hunter Mountain has no independent knowledge of the amount of Class 8 and 9 Allowed Claims.

13. Further, the quarterly post-confirmation reports only reflect assets directly held HCMLP which are only a fraction of the Assets.

14. The Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate. *See* Plan, ¶Art. IV(B)(9). But no like information regarding valuation of the Claimant Trust Assets is available to Holders of Contingent Claimant Trust Interests.

**C. Hunter Mountain is also a defendant in the Kirschner Adversary Proceeding**

15. While normally this lack of transparency into whether the Contingent Claimant Trust Interest will vest would not require valuation information to be provided at this intermediate juncture, here Hunter Mountain's status as a defendant in the Kirschner Adversary necessitates greater transparency.

16. On October 15, 2021, Marc C. Kirschner as Litigation Trustee of the Litigation Sub-Trust commenced the Kirschner Adversary Proceeding against twenty-three defendants including Hunter Mountain (a Holder of Class 10 Equity Interests) for various causes of action. *See* Kirschner Adversary Proceeding, Dkt. No. 1 (as amended by Dkt. No. 158).

17. The Litigation Sub-Trust was established within the Claimant Trust as a wholly owned-subsubsidiary of the Claimant Trust for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims, with any proceeds therefrom to be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries. *See* Plan, Article IV, ¶ (B)(4).

18. Therefore, any recovery from the Kirschner Adversary Proceeding will be distributed to Claimant Trust Beneficiaries.

19. So, if Hunter Mountain could be a Claimant Trust Beneficiary, the Litigation Sub-Trust is pursuing claims against Hunter Mountain, which, if it becomes a Claimant Trust Beneficiary, would be the recipient of distributions of such recovery (less the cost of litigation). This last part is the most troubling and catalyst for requiring a valuation at this juncture. The costs of litigation are only increasing and are likely to be great. Therefore, the costs to litigate against Hunter Mountain will be borne by Hunter Mountain by virtue of its status as a Holder of a Contingent Claimant Trust Interest, and every dollar incurred litigating against Hunter Mountain decreases the likelihood that Hunter Mountain's Contingent Claimant Trust Interest will vest.

20. And if whether Hunter Mountain will be a Claimant Trust Beneficiary is a close call [*i.e.* because the difference between Assets and Obligations is "small" (a relative term given the hundreds of millions of dollars at stake)], then this will greatly inform Hunter Mountain's litigation decisions and could affect materially the prospects of overall resolution.

21. Information concerning the amount of cash Assets, together with the remaining non-cash Assets (without regard to the litigation of Estate Claims), together with the current Obligations, could well generate fruitful settlement discussions because it is reasonable to believe that Hunter Mountain could decide that it can utilize non-cash assets in such a way as to maximize their value in a way that HCMLP and the Claimant Trust cannot, after resolution of the Obligations.

### **RELIEF REQUESTED**

22. Simply put, Hunter Mountain seeks information, which is readily available to HCMLP and the Claimant Trust (and for which Hunter Mountain is willing to bear the cost of collating) that will inform whether Hunter Mountain will be a Claimant Trust Beneficiary so that:

(i) all parties can avoid the facially unpalatable circumstance of the Litigation Sub-Trust seeking recovery from Hunter Mountain which could be raised to go to pay Hunter Mountain, less the Litigation Sub-Trust's attorney's fees, and (ii) Hunter Mountain can make informed litigation decisions, including possibly seeking to assemble sufficient resources with which to resolve the Obligations, thereby negating the basis of any further litigation and resulting in an expeditious closing of the Bankruptcy Case. Hunter Mountain is situated in priority to Dugaboy, so it has a firmer basis for entitlement.

23. Hunter Mountain does not seek to interfere with or be part of the liquidation process, does not seek to examine negotiations, does not seek the identity of persons or entities with whom HCMLP or the Claimant Trust is dealing, does not seek to substitute its judgment for that of person and parties authorized under the Plan. But as a Holder of Contingent Claimant Trust Interests, it is entitled to information as to the value of Assets and amount of Obligations.

#### **BASIS FOR RELIEF REQUESTED**

24. This Court specifically retained jurisdiction to ensure that distributions to Holders of Allowed Equity Interests are accomplished pursuant to the provisions of the Plan. *See* Plan, Article XI. The Plan provides that distributions to Allowed Equity Interests will be accomplished through the Claimant Trust and Contingent Claimant Trust Interests. *See* Plan Article III, (H)(10) and (11).

25. The relief requested by Hunter Mountain is limited to the likelihood that the Contingent Claimant Trust Interests will vest. This information will help ensure distributions to Holders of Allowed Equity Interests as well as possibly lead to a resolution of overall the Bankruptcy Case.

## CONCLUSION

26. For the reasons set forth herein, Hunter Mountain supports the request of Dugaboy to compel information regarding the value of the Assets and Obligations and the outstanding claims in Classes 8 and 9.

**Respectfully submitted:**

**KELLY HART PITRE**

/s/ *Louis M. Phillips*

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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this August 24, 2022.

/s/ Louis M. Phillips  
Louis M. Phillips

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
Reorganized Debtor. )  
\_\_\_\_\_ )

**THE HIGHLAND PARTIES' MOTION TO QUASH SUBPOENAS SERVED BY  
THE DUGABOY INVESTMENT TRUST OR FOR A PROTECTIVE ORDER**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Highland Capital Management, L.P. (“Highland” or, as applicable, the “Debtor”), the reorganized debtor in the above-captioned chapter 11 case, HCMLP GP LLC (“Highland GP”), the Highland Claimant Trust (the “Claimant Trust”), and Development Specialists, Inc. (“DSI”) (collectively, the “Highland Parties”), by and through their undersigned counsel, hereby file this motion (the “Motion to Quash”) (i) pursuant to Federal Rule of Civil Procedure (“FRCP”) 45(d), made applicable herein pursuant to Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9016, to quash the Subpoenas<sup>1</sup> served by The Dugaboy Investment Trust (“Dugaboy”) on the Highland Parties or, in the alternative, (ii) for a protective order pursuant to FRCP 26(c), made applicable herein pursuant to Bankruptcy Rules 9014 and 7026.

### **PRELIMINARY STATEMENT**<sup>2</sup>

1. Dugaboy puts the cart before the horse. The Subpoenas should be quashed because they are an improper attempt to obtain through discovery the very relief sought in the Valuation Motion; indeed, if the Subpoenas are enforced, the Valuation Motion will effectively be rendered moot.

2. In the Valuation Motion, Dugaboy seeks an evidentiary hearing and “a determination by this Court of the current value of the estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors,” all so it can ostensibly determine whether its *de minimis*, contingent, subordinated equity interest in the Claimant Trust is “in the money.” But as set forth in Highland’s Objection to the Valuation Motion, Dugaboy has no legal or equitable right to obtain the information sought in the Valuation Motion,

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<sup>1</sup> “Subpoenas” refers to the subpoenas attached as Exhibits 1 to 4, respectively, to the *Declaration of John A. Morris in Support of the Highland Parties’ Motion to Quash Subpoenas Served by The Dugaboy Investment Trust of for a Protective Order* (“Morris Decl.”) being filed simultaneously with this Motion to Quash.

<sup>2</sup> Capitalized terms used but not defined in this Preliminary Statement have the meanings given to them below.

a result that is not altered by the service of the Subpoenas. Indeed, it is indisputable that Dugaboy does not have, and will never have, a legally cognizable interest in the post-Effective Date estate unless and until the Trustee files a certification with the Court declaring that unsecured creditors have been paid in full and all disputed claims have been resolved.

3. Nevertheless, Dugaboy served the Subpoenas seeking broad discovery—essentially all of Highland’s financial information since even before the Effective Date. But Dugaboy has failed to establish that it has a right to the information sought, and that is fatal. At, best, the Subpoenas were served prematurely.

4. Separately, the Subpoena directed to Highland should be quashed because FRCP 45 does not apply to parties such as Highland. Dugaboy was required to follow the regular procedure for document production under FRCP 34, made applicable by Bankruptcy Rules 9014 and 7034. FRCP 34, of course, gives parties (such as Highland) thirty days to respond and provides a developed mechanism for presentation of the recipient’s objections, resolution of those objections, and production. Dugaboy offer no basis or justification for its attempt to deprive Highland of its rights under FRCP 34.

5. Alternatively, if the Court declines to quash the Subpoenas (or any of them), the Highland Parties request that the Court issue a protective order holding the Subpoenas in abeyance until thirty (30) days after an order resolving the Valuation Motion becomes final and non-appealable.<sup>3</sup>

---

<sup>3</sup> If the Court denies the Valuation Motion, the Subpoenas should be quashed at that time. If the Court grants the Valuation Motion, the Highland Parties should be permitted to object to the scope of the requests within the Subpoenas as it deems appropriate.

### **RELIEF REQUESTED**

6. The Highland Parties request that the Court quash the Subpoenas, or, alternatively, issue a protective order holding the Subpoenas in abeyance until the Court decides the Valuation Motion and, should it grant the Valuation Motion in whole or in part, set this Motion to Quash for hearing thirty (30) days after its order on the Valuation Motion becomes final and non-appealable.

### **JURISDICTION AND VENUE**

7. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, FRCP 45 and Bankruptcy Rule 9016. The statutory predicates for the relief requested in this Motion to Quash are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 9014, 9016, and 7026 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **RELEVANT BACKGROUND**

8. October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Bankruptcy Case”). The Bankruptcy Case was subsequently transferred to this Court on December 4, 2019.

9. On February 22, 2021, this Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”), which confirmed the *Fifth Amended*

*Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (the “Plan”).<sup>4</sup>

10. The Plan became effective on August 11, 2021 [Docket No. 2700] (the “Effective Date”).

11. On the Effective Date, all prepetition equity interests in Highland, including Dugaboy’s *de minimis* interest, were canceled. New limited partnership interests were issued to the Claimant Trust and new general partnership interests were issued to Highland GP (together with Highland, the “Highland Entities”). Beneficial interests in the Claimant Trust were issued to Highland’s prepetition general unsecured creditors in Class 8 (General Unsecured Claims) and Class 9 (Subordinated Claims). Highland’s assets were either transferred to the Claimant Trust or remained at Highland for monetization.

12. The Plan provides that former equity holders such as Dugaboy have only a contingent, springing beneficial interest in the Claimant Trust that arises only if and at the time that the Claimant trustee certifies to the Bankruptcy Court that the Debtor’s unsecured creditors are paid in full and all disputed unsecured claims have been resolved.

13. Even though it has no cognizable interest in the Claimant Trust, on June 30, 2022, Dugaboy filed its *Motion for the Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382] (the “Valuation Motion”) seeking to have the Court determine “the current value of the estate and an accounting of the assets currently held the Claimant Trust and available for distribution to creditors.” Valuation Motion at 1.

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<sup>4</sup> On August 19, 2022, the United States Court of Appeals for the Fifth Circuit affirmed the Confirmation Order in relevant part. Case No. 21-10449, Document No. 516439341. On September 7, 2022, the Fifth Circuit granted appellants’ motion for rehearing, withdrew the Initial Opinion, and entered a slightly revised new opinion which replaced the opinion entered on August 19, 2022. *Id.*, Document Number 516462923.

14. On August 24, 2022, Highland filed its objection to the Valuation Motion [Docket No. 3465] (the “Objection”). Dugaboy has not filed a reply in support of the Valuation Motion and the Valuation Motion has not been set for a hearing.

15. Rather than await the Court’s determination of the Valuation Motion as to its entitlement to a valuation and accounting, Dugaboy served the Subpoenas on August 31 and September 1, 2022, seeking to have (i) Highland, (ii) its general partner, Highland GP, and (iii) its financial advisor, DSI, produce the very documents sought in the Valuation Motion. The Subpoenas seek broad financial and business information from both before and after the Effective Date of the Plan and set a compliance date of September 15, 2022.

16. The Highland Parties asked Dugaboy to adjourn the compliance date to the date that is thirty (30) days after a decision on the Valuation Motion becomes final and unappealable. [Dugaboy has not agreed to the Highland Parties’ proposal.]

17. This Motion to Quash followed.

### **ARGUMENT**

#### **A. The Subpoenas Should Be Quashed**

18. FRCP 45 (made applicable to this contested matter by Bankruptcy Rule 9016) “explicitly contemplates the use of subpoenas in relation to non-parties and governs subpoenas served on a third party . . . as well as motions to quash or modify.” *Romac Env’t Servs., LLC v. Wildcat Fluids, LLC*, Civil Action No. 6:20-0581, 2022 U.S Dist. LEXIS 99837, at \*3 (W.D. La.

June 3, 2022) (quashing subpoena). FRCP 45(d)(3) provides that “[o]n timely motion, the court . . . must quash or modify a subpoena that . . . subjects a person to undue burden.”<sup>5</sup>

19. The *Romac* court continued:

In analyzing whether a subpoena presents an undue burden, courts consider the following factors: “(1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed....Whether a burdensome subpoena is reasonable must be determined according to the facts of the case, such as the party's need for the documents [or information] and the nature and importance of the litigation.

*Romac Env't Servs.*, 2022 U.S. Dist. LEXIS 99837 at \*4 (quoting *Wiwa v. Royal Dutch Petrol. Co.*, 392 F.3d 812, 818 (5th Cir. 2004)). Relevance is determined under the standard of FRCP 26(b)(1): “[i]nformation must therefore be nonprivileged, relevant, and proportional to the needs of the case to constitute discoverable material.” *Id.* at \*5. Movant bears the burden of persuasion that compliance with the subpoena “would be unreasonable and oppressive.” *Id.* at \*4 (citing *Wiwa*).

**B. The Subpoenas Seek Irrelevant Information and Are Therefore Unduly Burdensome**

20. The Subpoenas should be quashed because they are unduly burdensome in that they seek information that is premature on the Valuation Motion, and instead improperly demand documents for a valuation and accounting that is the ultimate relief that Dugaboy is seeking. The “undue burden” factors weigh overwhelmingly in favor of quashing the Subpoenas.

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<sup>5</sup> Dugaboy issued the Subpoenas out of this Court, although the place of compliance is New Orleans. By designating this Court as the issuing court, Dugaboy has waived any objection to this Court hearing this Motion to Quash. The Highland Parties consent to this Court hearing the Motion to Quash as well. See *Romac*, 22 U.S. Dist. LEXIS 99837 at \*7-8. If need be, the Highland Parties request that the Court consider Section I of this Motion to Quash to be considered to be a motion for a protective order denying production of the requested documents.

**1. The Information Dugaboy Seeks to Obtain by the Subpoenas Is Irrelevant**

21. At the first level, the information Dugaboy seeks is irrelevant to the Court's determination of the Valuation Motion. The issues concerning the Valuation Motion are legal in nature and can be resolved by the plain and unambiguous terms and provisions of the Plan, the Claimant Trust Agreement, and the other Plan documents. In contrast, the information sought by the Subpoenas has no bearing on Dugaboy's standing or purported right to a valuation or an accounting and are therefore irrelevant to that determination.<sup>6</sup> Quite frankly, if Dugaboy thought that it needed discovery to pursue its claim of entitlement to a valuation or accounting, it could—and should—have brought the claim as an adversary proceeding. It did not.

22. Furthermore, the information that Dugaboy seeks in the Subpoenas is at best premature, because that information is the very object of the Valuation Motion. If the Valuation Motion is granted, Dugaboy will be entitled to appropriate discovery for such accounting. But here, enforcement of Subpoenas at this stage would give Dugaboy the ultimate relief it seeks—before any determination is made that it is entitled to such relief.

23. For that reason, substantive discovery for the accounting itself must await the determination of the party's right to an accounting. *See Nageire v. Ortega T. (In re Ortega T.)*, 562 B.R. 538, 543 (Bankr. S.D. Fla. 2016) (accounting premature until court determined that entities in issue were property of the estate); *Robinson v. Miller*, No. 2:11-cv-56-JHR, 2011 U.S. Dist. LEXIS 71149, at \*25 (D. Me. June 30, 2011) (Plaintiff not entitled to discovery on accounting claim before establishing right to accounting); *Arthur Finnieston, Inc. v. Pratt*, 673 So. 2d 560,

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<sup>6</sup> To the extent that Dugaboy asserts that it needs discovery on the threshold issue of its standing and entitlement to an accounting or valuation, that assertion would only emphasize that this matter should have been brought as an adversary proceeding, as Bankruptcy Rule 7001(2) requires, which would allow for orderly determination and scheduling of discovery to which the parties agree or that the Court determines to be appropriate. *See* Objection ¶ 24.

562 (Fla. Dist. Ct. App. 1996) (“It is well established that discovery as to an accounting must be deferred until the preliminary issue of the right to an accounting is settled”) (internal quotation marks omitted)).

## 2. **Dugaboy Has No Right to the Information It Seeks by the Subpoenas**

24. Moreover, Dugaboy has no right to the information requested in the Subpoenas. As Highland states in its Objection:

Dugaboy does not—and cannot—cite to a statute, rule, or judicial opinion authorizing this Court to grant the relief it seeks. Moreover, Dugaboy does not claim to be a beneficiary of the Claimant Trust, and it is not. Nor does Dugaboy contend—because it cannot—that it has any right under the Plan, the Claimant Trust Agreement, or any of their related agreements and documents to the information it seeks. Indeed, even actual beneficiaries of the Claimant Trust have no right to the information Dugaboy demands.<sup>6</sup>

Objection ¶ 11. *See* Claimant Trust Agreement, effective as of August 11, 2021 (the “CTA”) § 3.12(b) (the CTA provides Claimant Trust beneficiaries with limited information rights; however, the Claimant Trustee may “redact any portion of such reports” to protect confidential information). A true and accurate copy of the CTA is attached to the Morris Decl. as **Exhibit 5**. The Subpoenas, then, are an effort by Dugaboy to bypass the terms of the Plan and the Claimant Trust governing documents and gain access to information to which it has no right.

## C. **The Subpoena to Highland Is an Improper Attempt to Evade FRCP 34**

25. Highland—the Debtor—is a party to this contested matter. Rule 9014 makes FRCP 34—concerning the production of documents and things—applicable to parties to this contested matter. Rule 34 provides greater structure for the production of documents by parties, most notably a 30-day deadline for responding to requests for production rather than the 14 days set unilaterally by Dugaboy in the Subpoenas under Rule 45. “However, the Court in this District and others in this Circuit have disallowed the improper use of a Rule 45 subpoena to obtain information or

documents more properly discovered under Federal Rule of Civil Procedure 33 or 34.” *Gomez v. Normand*, No. 16-17046, 2017 U.S. Dist. LEXIS 103386, at \*3 (E.D. La. July 5, 2017) (collecting cases and quashing subpoena served on party).

26. Here, Dugaboy’s misuse of Rule 45 to serve a subpoena requiring production of documents in 14 days rather than 30 is emblematic of its greater procedural failure in bringing its purported claim for valuation and accounting by motion as a contested matter, rather than as an adversary proceeding under Bankruptcy Rule 7001(2) for the determination of the extent of an interest in property. Objection ¶ 24. Had Dugaboy brought a proper adversary proceeding, its efforts at discovery would have been subject to the full, orderly structure and scheduling of FRCP 26 rather than Dugaboy’s whims and tactics. The Subpoena to Highland should be quashed on the grounds that Dugaboy should have employed a FRCP 34 demand for production. *See Gomez*, 2017 U.S. Dist. LEXIS 103386, at \*3-4.

27. For all these reasons, the Court should quash the Subpoenas.

**D. In the Alternative, the Court Should Issue a Protective Order Staying the Subpoenas Until Its Decision on the Valuation Motion Becomes Final and Non-Appealable**

28. Should the Court decline to immediately quash the Subpoenas (or any of them), it should issue a protective order under FRCP 26(c)(1) (made applicable herein by Bankruptcy Rule 9014) that holds the Subpoenas and this Motion to Quash in abeyance until the issues raised by the Valuation Motion are resolved. At that point, the scope of discovery, if any, to which Dugaboy is entitled will be clearer. The Highland Parties should then be permitted to raise any objections to the scope of the Subpoenas, and Dugaboy’s discovery requests can be addressed in an orderly way.

29. FRCP 26(c)(1) provides that “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” FRCP 26(c)(1); *see Romac Env’t Servs.*, 2022 U.S. Dist. LEXIS 99837, at \*6. The Court

has wide discretion in determining whether or not to impose a protective order and fashioning one. *Id.*, at \*6-7.

30. Movant in the first instance bears the burden of persuasion for the issuance of a protective order. “Like a motion to quash, the ‘burden is upon [the party seeking the protective order] to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.” *Id.*, at \*6 (alteration in original) (quoting *Meisenheimer v. DAC Vision Inc.*, No. 3:19-cv-1422-M, 2019 U.S. Dist. LEXIS 209433, 2019 WL 6619198, at \*2 (N.D. Tex. Dec. 4, 2019)).

31. The burden then shifts to the party propounding the discovery. “To successfully oppose a motion for protective order, however, the party seeking discovery may need to make its own showing of the proportionality factors, including the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, and the importance of the discovery in resolving the issues.” *Id.*, at \*7. Any relevant public interest may also be a consideration. *Id.*

32. Here, should the Court not quash the Subpoenas, the Highland Parties request that the Court issue a protective order adjourning this Motion to Quash until thirty days after the Court’s order on the Valuation Motion becomes final and no longer subject to appeal. If the Court denies the Valuation Motion, then the Subpoenas will be moot. If and to the extent the Court grants any part of the Valuation Motion, then it may be that some part of the discovery requested by Dugaboy could become relevant.

33. As demonstrated above, the Subpoenas place an undue burden upon the Highland Parties in that they are a premature and back-door attempt to obtain the very relief sought in the Valuation Motion (to which Dugaboy has no legal or equitable right). Reciprocally, because

Dugaboy has no right to the information it seeks, it cannot be disadvantaged by a protective order, and the information in any event has no probative value at this point in this contested matter.

34. The Subpoenas do not implicate any public interest in this essentially private dispute.

35. In the event that the Court does not quash the Subpoenas, the Highland Parties request that it enter the requested protective order.

### **PRAYER**

WHEREFORE, the Highland Parties respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, quashing the Subpoenas, or, alternatively, issuing a protective order adjourning this Motion to Quash until 30 days after its order on the Valuation Motion becomes final and non-appealable.

Dated: September 14, 2022

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

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on September 12, 2022, Highland’s counsel communicated with Dugaboy’s counsel regarding the relief requested in this Motion to Quash. The relief requested in the Motion to Quash is opposed by Dugaboy.

/s/ Zachery Z. Annable  
Zachery Z. Annable

**Exhibit A**  
**Proposed Order**

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

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In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Reorganized Debtor.  
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Chapter 11

Case No. 19-34054-sgj11

**ORDER GRANTING THE HIGHLAND PARTIES' MOTION TO QUASH**

This matter having come before the Court on *The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order* [Docket No. \_\_\_\_] (the "Motion")<sup>2</sup> filed by Highland Capital Management, L.P., the reorganized debtor ("Highland" or the "Debtor") in the above-captioned chapter 11 case, on its own behalf and on behalf of HCMLP GP LLC, the HCMLP Claimant Trust, and Development Specialists, Inc. (collectively

<sup>1</sup> The last four digits of Highland's taxpayer identification number are 8357. The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.

with Highland, the “Movants”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered (a) the Motion, (b) the *Declaration of John A. Morris in Support of the Highland Parties’ Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order* [Docket No. \_\_\_\_], including Exhibits 1 through 5 annexed thereto, (c) all responses to the Motion, and (d) the arguments presented by counsel at the hearing on the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.
2. The Subpoenas issued by The Dugaboy Investment Trust to the Movants are quashed.
3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order.

**### END OF ORDER ###**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717)  
John A. Morris (NY Bar No. 2405397)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
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Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	

**DECLARATION OF JOHN A. MORRIS IN SUPPORT OF  
THE HIGHLAND PARTIES' MOTION TO QUASH SUBPOENAS SERVED  
BY THE DUGABOY INVESTMENT TRUST OR FOR A PROTECTIVE ORDER**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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

1. I am an attorney at the law firm Pachulski, Stang, Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., and I submit this Declaration in support of *The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order*, which is being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit 1** is a true and correct copy of the subpoena served on Highland Capital Management, L.P., by The Dugaboy Investment Trust ("Dugaboy").

3. Attached as **Exhibit 2** is a true and correct copy of the subpoena served on HCMLP GP LLC by Dugaboy.

4. Attached as **Exhibit 3** is a true and correct copy of the subpoena served on the HCMLP Claimant Trust by Dugaboy.

5. Attached as **Exhibit 4** is a true and correct copy of the subpoena served on Development Specialists, Inc., by Dugaboy.

6. Attached as **Exhibit 5** is a true and correct copy of the Claimant Trust Agreement, effective as of August 11, 2021.

*[Signature Page Follows]*

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

Dated: September 14, 2022.

/s/ John A. Morris  
John A. Morris

# EXHIBIT 1



### Service of Process Transmittal Summary

**TO:** Legal Notices  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
100 CRESCENT CT STE 1850  
DALLAS, TX 75201-7817

**RE:** Process Served in Delaware

**FOR:** Highland Capital Management, L.P. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** HIGHLAND CAPITAL MANAGEMENT, L.P vs. Highland Capital Management, LP  
Name discrepancy noted.

**CASE #:** 1934054SGJ

**NATURE OF ACTION:** Subpoena - Financial/Credit card records

**PROCESS SERVED ON:** The Corporation Trust Company, Wilmington, DE

**DATE/METHOD OF SERVICE:** By Process Server on 09/01/2022 at 01:13

**JURISDICTION SERVED:** Delaware

**ACTION ITEMS:** CT will retain the current log  
Image SOP  
Email Notification, Legal Notices notices@hcmlp.com

**REGISTERED AGENT CONTACT:** The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801  
866-203-1500  
DealTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



### PROCESS SERVER DELIVERY DETAILS

**Date:** Thu, Sep 1, 2022  
**Server Name:** Kevin Dunn

Entity Served	HIGHLAND CAPITAL MANAGEMENT, L.P.
Case Number	19-34054
Jurisdiction	DE

Inserts		



B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

NORTHERN

District of

TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P

Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054(SGJ)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Highland Capital Management, LP, c/o The Corp. Trust Co., Corp. Trust Cent., 1209 Orange St. Wilmington, DE 19801 (Name of person to whom the subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Table with 2 columns: PLACE (650 Poydras, Suite 2500, New Orleans LA 70130) and DATE AND TIME (09/15/2022 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: PLACE and DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/31/22

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Signature of Douglas Draper, Attorney

The name, address, email address, and telephone number of the attorney representing (name of party) The Dugaboy Investment Trust, who issues or requests this subpoena, are:

Douglas Draper, Heller Draper & Horn, 650 Poydras, Suite 2500, New Orleans LA, ddraper@hellerdraper.com, 504-299-3333

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (Page 2)

**PROOF OF SERVICE**

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any): \_\_\_\_\_  
on (date) \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on (date) \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

*(1) For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

*(2) For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

*(1) Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

*(2) Command to Produce Materials or Permit Inspection.*

*(A) Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

*(B) Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

*(3) Quashing or Modifying a Subpoena.*

*(A) When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

*(B) When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

*(C) Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

*(1) Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

*(A) Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

*(B) Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

*(C) Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

*(D) Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

*(2) Claiming Privilege or Protection.*

*(A) Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

*(B) Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

*(g) Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

SUBPOENA TO HIGHLAND CAPITAL MANAGEMENT, L.P.  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

**SUBPOENA ATTACHMENT A**

**I. DEFINITIONS**

The following definitions shall apply herein:

1. The terms “**all**,” “**any**,” and “**each**” shall each be construed as encompassing any and all. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.
2. The term “**document**” is defined to be synonymous in meaning and equal scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term. “Document” shall be construed as a document and all attachments thereto.
3. The terms “**including**” and “**includes**” are used to provide examples of certain types of information and should not be construed as limiting a request in any way. The term “including” shall be construed as if followed by the phrase “but not limited to.”
4. “**Acis**” means Acis Capital Management, L.P. and/or Acis Capital Management GP, LLC, and any of their agents, representatives, advisors, attorneys, or any other person acting on their behalf, including Joshua Terry.
5. “**Acis CLOs**” means all collateralized loan obligations managed by Acis
6. “**Debtor**” or “**HCMLP**” means Highland Capital Management, L.P., including its bankruptcy estate as a debtor in possession, the Reorganized Debtor (as that term is defined in the Plan), each of their general partners, and any of their respective predecessors, successors, partners, general partners, boards of directors (including independent directors), employees, agents, representatives, financial advisors, restructuring professionals, attorneys, or any other person acting on its behalf.
7. “**Exit Financing**” means the Exit Financing Agreement which the Court authorized the Debtor to enter into on June 30, 2021 [Dkt. 2503].
8. “**HCMLP Assets**” means all assets in which HCMLP held a direct or indirect interest, including but not limited assets held in Highland CLO Funding, Ltd., Dynamic Income Fund, Highland Opportunistic Credit Fund, Highland Healthcare Opportunities Fund, Stonebridge-Highland Healthcare Private Equity Fund (“Korean Fund”), Highland Select Equity Fund, Highland Multi Strategy Credit Fund, Highland Restoration Capital Partners, and the Highland CLOs.
9. “**Highland CLOs**” means Aberdeen Loan Funding, Ltd., Brentwood CLO, Ltd., Eastland CLO, Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Creditor Opportunities CDO Ltd., Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Jasper CLO Ltd., Highland Legacy Limited,

SUBPOENA TO HIGHLAND CAPITAL MANAGEMENT, L.P.  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

MultiStrat, Highland CLO Funding, Ltd., Trussway, all other portfolio companies and subsidiaries, and each individual Acis and Highland CLO.

9. All documents related to the Exit Financing, including financial reports, monthly account statements, and documents identifying the use of loan proceeds, payments made on the loan, and the outstanding balance due in the loan.
10. All agreements containing incentives, compensation, or a bonus structure executed by or on behalf of HCMLP with any person, firm, or corporation that has provided services to the Reorganized Debtor or for the Reorganized Debtor's benefit, either directly or indirectly, from the Effective Date to present.
11. The current agreement executed by and between the Reorganized Debtor and its General Partner.
12. All agreements executed by and between any executive of the Reorganized Debtor and the Reorganized Debtor.
13. All documents, excluding any agreements included in the Debtor's Plan Supplement, governing the Claimant Trust and Litigation Sub-Trust, including but not limited to any executed trust agreements amended after the Effective Date.
14. Documents sufficient to identify funds currently held by the Indemnity Subtrust, including draws made on the trust and the current assets held by the trust.
15. All profit and loss statements, cash flow statements, balance sheets, and projections sent to the Oversight Board for year-end 2020, 2021, and for month-end in 2022.
16. The Reorganized Debtor's 2021 tax return.
17. All agreements between the Debtor or the Reorganized Debtor concerning funds that may be due the Reorganized Debtor, being held to secure any debt owed by the Reorganized Debtor, or claims asserted by Acis or an Acis CLO against the Reorganized Debtor.
18. All documents reflecting amounts withheld by Acis to secure any claim by Acis or any Acis CLO against the Reorganized Debtor and reflecting how those funds are accounted for on the Debtor's books and records.
19. Documents reflecting the remaining plan payments to be made to the claimants holding claims in Classes 1 through 9 of the Plan as of October 1, 2022.
20. Documents reviewed in connection with the preparation of the post-confirmation reports filed by the Reorganized Debtor with the Bankruptcy Court.
21. All closing statements for any third-party assets reflecting consideration received by the Claimant Trust or the Reorganized Debtor, including any third-party asset managed or advised by the Reorganized Debtor from the Effective Date to present.

## **EXHIBIT 2**

B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

NORTHERN

District of

TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P

Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054(SGJ)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: HCMLP GP LLC, c/o The Corporate Trust Company, Corp. Trust Center., 1209 Orange St. Wilmington, DE 19801 (Name of person to whom the subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Table with 2 columns: PLACE (650 Poydras, Suite 2500, New Orleans LA 70130) and DATE AND TIME (09/15/2022 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: PLACE and DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/25/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/Douglas Draper Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) The Dugaboy Investment Trust, who issues or requests this subpoena, are:

Douglas Draper, Heller Draper & Horn, 650 Poydras, Suite 2500, New Orleans LA, ddraper@hellerdraper.com, 504-299-3333

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SUBPOENA TO HCMLP GP, LLC  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

SUBPOENA ATTACHMENT A

**I. DEFINITIONS**

The following definitions shall apply herein:

1. The terms **“all,” “any,”** and **“each”** shall each be construed as encompassing any and all. The connectives **“and”** and **“or”** shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.
2. The term **“document”** is defined to be synonymous in meaning and equal scope to the usage of the term **“documents or electronically stored information”** in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term. **“Document”** shall be construed as a document and all attachments thereto.
3. The terms **“including”** and **“includes”** are used to provide examples of certain types of information and should not be construed as limiting a request in any way. The term **“including”** shall be construed as if followed by the phrase **“but not limited to.”**
4. **“Claimant Trust”** means the Claimant Trust (as that term is defined in the Plan), its trustee, and any of its employees, agents, representatives, financial advisors, restructuring professionals, attorneys, or any other person acting on its behalf.
5. **“Reorganized Debtor”** means the Reorganized Debtor (as that term is defined in the Plan), its general partners, and any of its predecessors, successors, partners, general partners, boards of directors (including independent directors), employees, agents, representatives, financial advisors, restructuring professionals, attorneys, or any other person acting on its behalf.
6. **“Oversight Board”** means the Claimant Trust Oversight Board appointed pursuant to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
7. **“Plan”** means the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Dkt. 1808].
8. **“Effective Date”** means the date the Debtor’s Plan became effective, August 11, 2021.

**II. REQUESTED DOCUMENTS**

1. All documents relating to or concerning distributions, redemptions, or the like, made to HCMLP GP, LLC by any entity, whether directly or indirectly, since the Effective Date.
2. All audited and unaudited financial statements for HCMLP GP, LLC prepared since the Effective Date.
3. All financial reports and documents relating to the assets and liabilities of the Reorganized Debtor or the Claimant Trust delivered by HCMLP GP, LLC to the

SUBPOENA TO HCMLP GP, LLC  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

Oversight Board or received by HCMLP GP, LLC from the Reorganized Debtor or the Claimant Trust.

4. Documents evidencing a summary of all cash on hand, including but not limited to funds held in trust or any reserve account, at HCMLP GP, LLC from the Effective Date to the present.
5. All engagement letters executed by or on behalf of HCMLP GP, LLC with any person or entity who provides services to HCMLP GP, LLC or the Reorganized Debtor for the benefit of HCMLP GP, LLC or the Reorganized Debtor, either directly or indirectly, from the Effective Date to present and whose contract or agreement contains an incentive fee or bonus provision
6. HCMLP GP, LLC's 2021 tax return.
7. Any year-end balance sheet, profit and loss statement, or cash flow statement of HCMLP GP, LLC.
8. Any monthly balance sheet, profit and loss statement, or cash flow statement of HCMLP for the period January 2022 to date.
9. Any documents reflecting payments made by the Reorganized Debtor or the Claimant Trust to HCMLP GP, LLC for the period form the Effective Date to date.
10. The current contract or agreement between HCMLP GP and the Reorganized Debtor or the Claimant Trust.

## **EXHIBIT 3**

B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

NORTHERN

District of

TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P

Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054(SGJ)

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: HCMLP Claimant Trust, c/o Wilmington Trust, Nat'l. Assoc., Rodney Sq. N. 1100 N. Market St. Wilmington, DE 19890

(Name of person to whom the subpoena is directed)

**Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: **See Exhibit A**

PLACE 650 Poydras, Suite 2500, New Orleans LA 70130	DATE AND TIME 09/15/2022 9:00 am
--	-------------------------------------

**Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
-------	---------------

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/25/2022

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

/s/Douglas Draper  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)

The Dugaboy Investment Trust, who issues or requests this subpoena, are:

Douglas Draper, Heller Draper & Horn, 650 Poydras, Suite 2500, New Orleans LA, ddraper@hellerdraper.com, 504-299-3333

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SUBPOENA TO HCMLP CLAIMANT TRUST  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

SUBPOENA ATTACHMENT A

**I. DEFINITIONS**

The following definitions shall apply herein:

1. The terms “**all**,” “**any**,” and “**each**” shall each be construed as encompassing any and all. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.
2. The term “**document**” is defined to be synonymous in meaning and equal scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term. “Document” shall be construed as a document and all attachments thereto.
3. The terms “**including**” and “**includes**” are used to provide examples of certain types of information and should not be construed as limiting a request in any way. The term “including” shall be construed as if followed by the phrase “but not limited to.”
4. “**Effective Date**” means the date the Debtor’s Plan became effective, August 11, 2021.
5. “**Oversight Board**” means the Claimant Trust Oversight Board appointed pursuant to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
6. “**Plan**” means the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Dkt. 1808].
7. “**Reorganized Debtor**” means the Reorganized Debtor (as that term is defined in the Plan), and its general partners, predecessors, successors, partners, general partners, boards of directors (including independent directors), employees, agents, representatives, financial advisors, restructuring professionals, attorneys, or any other person acting on its behalf.

**II. REQUESTED DOCUMENTS**

1. All bank statements and investment account statements for accounts held by the Claimant Trust from the Effective Date to present.
2. All audited and unaudited financial statements, including but not limited to cash flow statements and balance sheets, prepared for the Claimant Trust either internally or by a third party from the Effective Date to present.
3. All statements and reports to beneficiaries that reflect the value of any beneficiary’s interest in the Claimant Trust.
4. Documents reflecting all distributions made by the Claimant Trust to the beneficiaries of the trust.

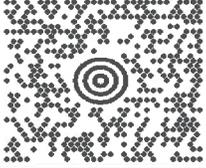
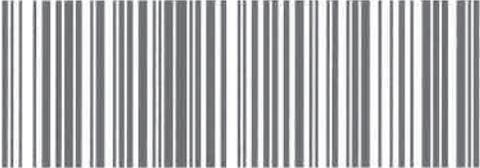
SUBPOENA TO HCMLP CLAIMANT TRUST  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

5. Documents reflecting the economic interest of each beneficiary in the Claimant Trust for the period from the Effective Date to present.
6. All documents governing the Claimant Trust and Litigation Sub-Trust, including but not limited to the executed trust agreements.
7. Documents sufficient to quantify the compensation and bonus structure (including any success fee and severance pay) of all persons or entities that have a bonus or incentive fee provision in their agreements with the Claimant Trust.
8. Documents between the Claimant Trust and the Oversight Board reflect the compensation paid to members of the Oversight Board
9. The year end 2020 and 2021 and each quarterly financial statement, including but not limited to balance sheets and profit and loss statements, for the Claimant Trust
10. Any bank account statement or investment account statement where the account is in the name of the Claimant Trust for December of 2020, December of 2021 and March 2022 and June 2022
11. Documents sufficient to identify any funds that the Claimant Trust asserts an ownership interest but such funds are held by a third party in trust as security for a loan or for an asserted right of indemnification
12. The Claimant Trust's 2021 tax return.

## **EXHIBIT 4**

Envelope: UPS\_LETTER\_CENTER  
Window  
Total Pages: 7  
Safety Seal(101761)



TERRITHONGSAVAT 2149323601 CT - DALLAS SOP TEAM 1999 BRYAN STREET DALLAS TX 75201		1.0 LBS LTR	1 OF 1
<b>SHIP TO:</b> CHRISTINE DEPAUL 3122634141 DEVELOPMENT SPECIALISTS INC. 10 S LA SALLE ST STE 3300 <b>CHICAGO IL 60603</b>			
	<b>IL 606 9-03</b> 		
<b>UPS NEXT DAY AIR</b>		<b>1</b>	
TRACKING #: 1Z X21 278 01 1834 4205			
			
BILLING: P/P			
Reference No.1: SOP/2401130/542218773/CT SOP Custo  TM			
<small>XOL 22.08.10 NV45 36.0A 08/2022*</small>			

1938049

1

Origin: Wolters Kluwer UPS 562130

Exhibit 4  
 Page 3 of 9  
 Corporation

**CT Packing Slip**

Case 19-34054-sgj11 Doc 3521-4 Filed 09/14/22 Entered 09/14/22 14:23:22 Desc

Exhibit 4 Page 3 of 9

**UPS Tracking # :** 1ZX212780118344205

**Created By :** BATCH BATCH

**Created On :** 08/30/2022 04:04 PM

**Recipient :**

<b>Christine DePaul</b>	
Title :	--
Customer :	Development Specialists Inc.
Address :	10 S LA SALLE ST STE 3300
Email :	cdepaul@dsi.biz
Phone :	312-263-4141
Fax :	312-263-1180

**Package Type :** Envelope

**Items shipped :** 1

Log #	Case #	Entity Name
542218773	1934054SGJ	Development Specialists, Inc.

001017



## Service of Process Transmittal Summary

**TO:** Christine DePaul  
Development Specialists Inc.  
10 S LA SALLE ST STE 3300  
CHICAGO, IL 60603-1026

**RE:** Process Served in Delaware

**FOR:** Development Specialists, Inc. (Domestic State: IL)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** HIGHLAND CAPITAL MANAGEMENT, L.P. vs. DEVELOPMENT SPECIALISTS, INC

**CASE #:** 1934054SGJ

**NATURE OF ACTION:** Subpoena - Business records

**PROCESS SERVED ON:** The Corporation Trust Company, Wilmington, DE

**DATE/METHOD OF SERVICE:** By Process Server on 08/30/2022 at 02:51

**JURISDICTION SERVED:** Delaware

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780118344205

**REGISTERED AGENT CONTACT:** The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801  
866-539-8692  
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



### PROCESS SERVER DELIVERY DETAILS

**Date:** Tue, Aug 30, 2022  
**Server Name:** Kevin Dunn

Entity Served	DEVELOPMENT SPECIALISTS, INC
Case Number	19-34054
Jurisdiction	DE

Inserts		



B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

NORTHERN

District of

TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P

Debtor

Case No. 19-34054(SGJ)

(Complete if issued in an adversary proceeding)

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: Development Specialists, Inc. c/o Corporation Trust Co., Corp. Trust Center, 1209 Orange St., Wilmington, DE 19801  
 (Name of person to whom the subpoena is directed)

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: **See Exhibit A**

PLACE 650 Poydras, Suite 2500, New Orleans LA 70130	DATE AND TIME 09/15/2022 9:00 am
--	-------------------------------------

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
-------	---------------

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 08/25/2022

CLERK OF COURT

OR

\_\_\_\_\_  
 Signature of Clerk or Deputy Clerk

Is/Douglas Draper  
 Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)  
 The Dugaboy Investment Trust, who issues or requests this subpoena, are:

Douglas Draper, Heller Draper & Horn, 650 Poydras, Suite 2500, New Orleans LA, ddraper@hellerdraper.com, 504-299-3333

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

B2570 (Form 2570 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (Page 2)

**PROOF OF SERVICE**

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SUBPOENA TO DEVELOPMENT SPECIALISTS INC  
ATTACHMENT A  
CASE NO. 19-34054-SGJ11

**SUBPOENA ATTACHMENT A**

**I. DEFINITIONS**

The following definitions shall apply herein:

1. The terms “**all**,” “**any**,” and “**each**” shall each be construed as encompassing any and all. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.
2. The term “**document**” is defined to be synonymous in meaning and equal scope to the usage of the term “documents or electronically stored information” in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term. “Document” shall be construed as a document and all attachments thereto.
3. The terms “**including**” and “**includes**” are used to provide examples of certain types of information and should not be construed as limiting a request in any way. The term “including” shall be construed as if followed by the phrase “but not limited to.”
4. “**Claimant Trust**” means the Claimant Trust (as that term is defined in the Plan), its trustee, and any of its employees, agents, representatives, financial advisors, restructuring professionals, attorneys, or any other person acting on its behalf.
5. “**Plan**” means the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Dkt. 1808].
6. “**Reorganized Debtor**” means the Reorganized Debtor (as that term is defined in the Plan), its general partners, and any of its predecessors, successors, partners, general partners, boards of directors (including independent directors), employees, agents, representatives, financial advisors, restructuring professionals, attorneys, or any other person acting on its behalf.
7. “**Effective Date**” means the date the Debtor’s Plan became effective, August 11, 2021.

**II. REQUESTED DOCUMENTS**

1. All financial reports and statements, including but not limited to balance sheets, cash flow statements, profit and loss statements and projections, provided by DSI to the Reorganized Debtor, the Claimant Trust, or HCMLP GP, LLC for year-end 2020 and 2021, and monthly for 2022

## **EXHIBIT 5**

## CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and Wilmington Trust, National Association, a national banking association (“WTNA”), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

### **DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.4(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.** **ESTABLISHMENT OF THE CLAIMANT TRUST**

### 2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

### 2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

### 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

#### 2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

**ARTICLE III.**  
**THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the “Authorized Acts”).

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee’s authority with respect to certain other assets, including certain portfolio company assets (the “Other Assets”).

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder’s Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the “Interim Trustee”) until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person’s appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee’s capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as “Estate Representative”. The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

### 3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

#### 4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

#### 4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

## ARTICLE V. TRUST INTERESTS

### 5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

#### 5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

**ARTICLE VI.**  
**DISTRIBUTIONS**

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

## ARTICLE VII. TAX MATTERS

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## **ARTICLE VIII.** **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## ARTICLE IX. TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

## **ARTICLE X.** **AMENDMENTS AND WAIVER**

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o Highland Capital Management, L.P.  
100 Crescent Court, Suite 1850  
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association  
1100 North Market Street  
Wilmington, DE 19890  
Attn: Corporate Trust Administration/David Young  
Email: nmarlett@wilmingtontrust.com  
Phone: (302) 636-6728  
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

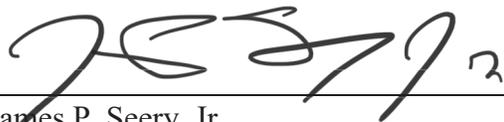
11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however,* that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

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IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By:   
James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By:   
James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,  
as Delaware Trustee

By: NC Marlett III  
Name: Neumann Marlett  
Title: Bank Officer

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

Debtor.

Chapter 11

Case N. 19-34054 (SGJ)

**SUPPLEMENTAL AND AMENDED MOTION FOR DETERMINATION OF THE  
VALUE OF THE ESTATE AND ASSETS HELD BY THE CLAIMANT TRUST**

**I. INTRODUCTION**

1. By this Motion, the Dugaboy Investment Trust (“Dugaboy”) respectfully seeks a determination by this Court of the current value of the estate and an accounting of the assets currently held the Claimant Trust and available for distribution to creditors, as contemplated by the Fifth Amended Plan of Reorganization, as Amended (the “Plan”) of Highland Capital Management, L.P. (the “Debtor” or “HCMLP”). Notably, although the latest quarterly operating report filed by the Reorganized Debtor projects a distribution to creditors totaling \$205 million (a scant \$11 million more than what the Debtor projected in its Plan Disclosure), Dugaboy has reason to believe that the mix of assets held by the Claimant Trust has changed dramatically since this Court confirmed the Plan and that the estate presently has sufficient cash and other assets with which to pay creditors in full plus interest. At the same time, the Reorganized Debtor has reported that it has paid to professionals nearly \$70 million since the Effective Date of the Plan—an enormous burn for an estate that projects payment of fractionally more to creditors. And extrapolating from the Reorganized Debtor’s most recent financial reporting, it appears that the

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estate has reserved or accrued for tens of millions of dollars of additional professional fees.

2. Notably, the Court previously described Dugaboy’s interest in the estate as “extremely remote,” a finding based solely on a projection as of February 2021. *See* Order dated February 22, 2021, Dkt. 1943 (“Plan Confirmation Order”) at ¶ 19; *see also id.*, ¶ 18. That projection was made at an arbitrary point in time (now almost 19 months ago) and was based on the value of assets then held by the estate, which necessarily fluctuates. But the value of the assets available for distribution to creditors is vastly different today than it was in February of 2021. We know this because almost all of the major assets have been liquidated, transforming what were once projections into finite values, and other assets have increased in value. Dugaboy believes that the combination of assets and cash held by the Claimant Trust in its own name and held in various funds, reserve accounts, and subsidiaries—if liquidated—would be sufficient to pay all Claimant Trust Beneficiaries in full, with interest or, at the very least, come very close. In other words, based upon reality as opposed to the Debtor’s projections 19 months ago, the nature of Dugaboy’s interest in the estate—and its standing to seek redress in the bankruptcy proceedings—cannot now be classified as remote.

3. By way of example only, at the time of the Debtor’s settlement with HarbourVest, it reported the value of HarbourVest’s interest in Highland CLO Funding, Ltd. (“HCLOF”) as \$22 million. *See* Dkt 1625, p.9 at fn. 5. But based on the research Dugaboy has done, HarbourVest’s interest in HCLOF was worth closer to \$45 million at the time the Debtor acquired that interest and is worth approximately \$75 million today, with the majority of the value held in cash.<sup>1</sup>

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<sup>1</sup> We know, for example, that HCLOF’s interest in the Acis CLOs is worth at least \$53 million, of which the Debtor

4. Further, Dugaboy's interest in the estate is very much real and realizable because there is a potential for significant payment to residual equity holders, and the way in which the estate is managed (including its expenses for such management) could detrimentally affect Dugaboy's financial interests. Indeed, Dugaboy believes that the estate has sold all but a few major assets of the estate, including most recently its Trussway asset, which upon information and belief, generated over \$246,000,000 of additional cash with which to pay creditors. In other words, the funds available to pay creditors and equity holders has grown tremendously since Plan confirmation. This difference in value is important—and underscores the need for this Motion—because, if accurate, it means that professionals representing the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust are litigating claims against Dugaboy, Hunter Mountain, and others, even though the only beneficiaries of any recovery from such litigation will be Dugaboy and Hunter Mountain. In other words, Dugaboy and Hunter Mountain are essentially footing the bill for huge legal fees so that the Claimant Trust and Litigation Sub-Trust can sue them only to return any recoveries back to them. Dugaboy has a very significant interest in a determination as to whether sufficient funds currently exist or will exist to pay all creditors in full such that the estate and its professionals can stop incurring professional fees to pursue unnecessary litigation.

5. The Debtor's failure to make any sizeable payments to creditors at this stage of proceedings is particularly curious in light of the Debtor's Plan Projections submitted in support of Plan confirmation. Those Projections reflected the Debtor's intention to distribute to creditors \$50,000,000 by September 30, 2021, \$50,000,000 by March 31, 2022, \$25,000,000 by June 30,

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is entitled to 50.62% as a result of the acquisition of the HarbourVest interest, or \$26.8 million. HCLOF also had significant holdings in the Highland CLOs, which held, among other assets, MGM stock. *See* Dkt. 1235 at ¶¶ 1-2.

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2022, and all remaining proceeds soon after all remaining assets were monetized. *See* Debtor's Amended Witness and Exhibit List With Respect to Confirmation Hearing to Be Held on February 2, 2021, Ex. DDDDDDD, Dkt. 1866-5, p.3, n.P. Despite these Plan Projections, as disclosed in the Debtor's most recent Post-Confirmation Report and accompanying Global Notes to Post Confirmation Report, the Debtor has distributed only \$6,201,896 to the General Unsecured Creditors, or 1.58% of the total Allowed Claims of \$390,624,608, while having made disbursements to parties other than the General Unsecured Creditors of \$84,179,524 since the Effective Date of the Plan, or 21.55% of the total Allowed Claims. *See* Post-Confirmation Report for the Quarter Ending 6/30/2022, Dkt. 3409 *and* Global Notes to Post Confirmation Report, Dkt. 3409-1.

6. Even if the estate does not have sufficient assets at present to pay all allowed claims in full, a determination of the current value of the estate would still benefit all creditors, residual equity holders, and parties-in-interest because such a determination would reveal the spread between the estate's asset value (exclusive of various adversary proceedings, including the notes lawsuits and the Kirschner litigation) and the estate's net liabilities to creditors. If all interested parties were able to understand that spread, it could facilitate a settlement that would achieve payment of creditors in full and resolution of all outstanding litigation while preventing the further enormous burn occasioned by legal fees and other costs currently borne by the estate (nearly \$70 million since the Effective Date and accruing at a rate of what Dugaboy estimates to be approximately \$5-\$7 million/month).<sup>2</sup>

7. Accordingly, this Motion seeks an evidentiary hearing so that the Court may

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<sup>2</sup> Indeed, the Debtor's Post-Confirmation Report for the quarter ending June 30, 2022 indicates that the Reorganized

determine the current amount of cash and other assets currently held by the Claimant Trust for distribution to Claimant Trust Beneficiaries (as that term is defined in the Plan). At the very least, disclosure of the assets held by the Claimant Trust may facilitate a meaningful settlement discussion and potentially end the litigation and appellate proceedings currently burdening the estate and resulting in very high legal fees, to the detriment of creditors and residual equity holders.

## II. BACKGROUND

### A. **HCMLP Files A Chapter 11 Petition Anticipating A Quick Restructuring And Exit From Bankruptcy**

8. HCMLP filed its chapter 11 petition in bankruptcy in the United States Bankruptcy Court for the District of Delaware on October 16, 2019. Dkt. 3.<sup>3</sup> The case was transferred over HCMLP's objection to this Court on December 4, 2019. Dkt. 1. As the Court has since acknowledged, at the time HCMLP filed its chapter 11 petition, the company had "relatively insignificant secured indebtedness," "did not have problems with its trade vendors or landlords," and "did not suffer any type of catastrophic business calamity." Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief ("Plan Confirmation Order"), Dkt. 1943, ¶ 8. Indeed, at the time of its filing, HCMLP had over \$550 million in assets and no outstanding judgment liabilities against it other than the award issued by the American Arbitration Association in favor of the Redeemer Committee of the Crusader Funds.<sup>4</sup> As a result, there was every reason to believe that HCMLP

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Debtor had disbursed \$84,179,524 since the Effective Date, only \$6,201,896 of which has been paid on general unsecured claims. *See* Dkt. 3409-1 at pp. 2-3.

<sup>3</sup> All references to the docket are to the docket entries in the Bankruptcy Court for the Northern District of Texas.

<sup>4</sup> HCMLP expected to pay the Redeemer Committee approximately \$110 million on that award, after offsets and other adjustments.

could achieve a quick and orderly restructuring of its judgment debt and emerge from bankruptcy a going concern.

**B. The Debtor and its Management Were Not Required To Disclose Assets and Transactions During Bankruptcy Proceedings**

9. As the Court is aware, a quick exit from bankruptcy did not transpire as anticipated. During the 16 months between the time of HCMLP’s bankruptcy filing and the Court’s approval of the Plan, the estate’s value fluctuated periodically. Nonetheless, the Debtor—with the Court’s approval—only provided the public with limited information regarding the mix of assets held by the estate (including at the subsidiary level). The Court likewise granted the Debtor’s request to shield from public scrutiny asset sales conducted by the Debtor’s management during bankruptcy. For example, the Court authorized the Debtor to place assets that were acquired as part of the Debtor’s settlement with HarbourVest into a non-debtor special purpose entity. *See* Dkt. 1788. That placement meant that the true value of the asset, the asset’s appreciated value, and its ultimate liquidation were not reported or disclosed to creditors or other interested parties.

10. The Court also did not require the Debtor to file any Rule 2015.3 reports during the bankruptcy proceedings, notwithstanding that the Debtor did not seek relief from the requirement.<sup>5</sup> Such reports were especially important in this bankruptcy case because the Debtor held most of its assets in subsidiaries. The Debtor’s failure to file the required reports is difficult to understand. Indeed, despite this Court’s characterization of HCMLP as a “byzantine complex”

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<sup>5</sup> As the Court is aware, there is a mechanism for seeking such relief under the Federal Rules of Bankruptcy Procedure. Specifically, the Court could have granted the Debtor relief from the Rule 2015.3 disclosure requirement “for cause,” including that “the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available.” Fed. R. Bankr. P. 2015.3(d). But HCMLP did not seek relief from the requirements under Rule 2015.3(a), nor did it make any “good faith effort” to comply with the Rule. To the contrary, Mr. Seery publicly represented that the task of filing the required reports simply “fell through the cracks.” *See* Dkt. 1905 (Feb. 3, 2021 Hr’g Tr. at 49:5-21).

(see Plan Confirmation Order, ¶ 6), the assets of the estate fall into a handful of discrete investments (less than ten line items), most of which have audited financials and/or were required to make monthly or quarterly net-asset-value or fair-value determinations.<sup>6</sup> Further, the Debtor provided information regarding these assets' value to the Official Committee for Unsecured Creditors ("UCC") on a weekly basis during the bankruptcy proceedings, and the UCC was able to summarize the so-called "byzantine complex" in two short pages attached to the Debtor's Amended Operating Protocols. See Dkt. 466-1. And if the Debtor really is a "Byzantine complex" as the Court has claimed, that fact seemingly makes transparency all the more important. This is particularly true because the Debtor is an SEC-registered investment advisor charged with knowing how much it owns, how much it controls, and where all major assets of the company reside. But because none of this information was not provided in Rule 2015.3 reports, there was no publicly available information regarding the composition of assets and the corresponding liabilities held by the Debtor at the subsidiary level, making it impossible for outside stakeholders and interested parties to fairly evaluate the Debtor's estate.<sup>7</sup>

11. Following an extended period of non-transparency and vague quarterly reporting in which the Debtor represented that the estate had suffered a loss in value of more than \$230 million (see Disclosure Statement, Dkt. 1473), Dugaboy filed a motion seeking appointment of an examiner to independently examine the estate, the reasons for its apparent losses, and other issues relating to estate value. See generally Dkt. 1752. Although Dugaboy filed the motion well

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<sup>6</sup> Indeed, during one deposition, Mr. Seery was able to identify most of HCMLP's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by the Debtor's subsidiaries. See Deposition of James P. Seery, Jr. ("Seery Dep."), attached hereto as Exhibit A, at 22:4-10, 23:1-29:10.

<sup>7</sup> Furthermore, the information provided in the Quarterly Reports does not provide any information to assist Dugaboy in determining its likelihood of recovery.

before the Plan confirmation hearing, the Court set the motion six weeks out on a date well after the confirmation hearing. *See* Dkt. 1832. Thereafter, the Court denied the motion as moot in light of the Plan Confirmation Order, which the Court held stripped it of authority to appoint an examiner. Dkt. 1960.

12. In connection with the hearing in the Confirmation of the Debtor’s Plan, the Debtor offered up a chart (entitled “Plan Analysis v. Liquidation Analysis”), which attempted to reflect both what creditors could receive in a liquidation and that which Creditors could receive under the Plan. But the analysis reflected in that document is problematic for at least three reasons. First, the document is a summary based upon projections.<sup>8</sup> Second, the Debtor refused to disclose subsidiary ledgers that comprised a significant amount of the Debtor’s monetization value. Third, as we know now, the information is inaccurate. Based on that problematic analysis, and the testimony of Mr. Seery at the Plan confirmation hearing—which the Court accepted—the Debtor projected at confirmation that it would realize only \$257 million dollars from the “monetization” of its assets by December 31, 2022. Dkt. 1894 (Feb. 2, 2021 Hr’g Tr.) at 120:10-121:3, 122:13-123:2. On information and belief, this projected monetization value is surpassed by the income of the sale of just two assets, Trussway and HCLOF. From that monetization, the Debtor projected that creditors in Classes 8 and 9 would by now be paid \$125,000,000. *See* Dkt. 1866-5, p.3, n.P.

13. It is now more than a year and a half since the Debtor’s Plan projections were provided to the Court, and Dugaboy is merely asking for the Court to conduct an evidentiary hearing so that the projections can be judged by the realities of the ongoing liquidation of estate assets and the known increases in asset value. Based on known settlements and other filings

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<sup>8</sup> What is more, Seery admitted under oath that, in putting together the projections, the Debtor’s management arbitrarily adjusted downward third-party valuations of certain Debtor assets. Seery Dep., Ex. A, at 48:1-50:6.

reflecting allowed claims, Dugaboy believes that allowed claims to be paid now total at least \$400 million. *See* Dkt. 3409. But nobody has disclosed the total other liabilities of the Claimant Trust. Nor do interested stakeholders know how much was drawn on the exit loan approved by this Court, how much is outstanding on that loan today, and what other payables and contractual liabilities are owed on account of the Claimant Trust and the Litigation Sub-Trust. All of this information is critical to ascertaining what the estate is capable of paying to creditors now or in the near-term and whether a remainder will be left for the residual equity holders.

### **C. The Bankruptcy Court Approves A Liquidation Plan**

14. The Court ultimately approved a Plan that contemplates the liquidation of HCMLP and an orderly wind-down of operations. *See* Plan Confirmation Order, ¶ 2. In reaching its conclusion that the Plan was in the “best interest” of creditors and other stakeholders, the Court expressly relied upon the Amended Liquidation Analysis/Financial Projections filed by the Debtor that projected a recovery by Class 7 General Unsecured Creditors of 85% and Class 8 General Unsecured Creditors of 71%. *Id.*, ¶ 52; *see also* Dkt. 1875 at p. 4.

15. Further, the Court overruled objections to the Plan lodged by entities it deemed related to Mr. Dondero, including Dugaboy. In doing so, the Court acknowledged that Dugaboy has a residual ownership interest in HCMLP and therefore “technically” had standing to object to the Plan. *See* Plan Confirmation Order, ¶¶ 17-18. But based on the Debtor’s financial projections at the time of confirmation, the Court found that the plan objectors’ “economic interests in the Debtor appear to be extremely remote.” *Id.*, ¶ 19; *see also id.*, ¶ 17 (“the remoteness of their economic interests is noteworthy”).

### **D. The Plan Grants Dugaboy A Springing Interest In The Claimant Trust**

16. Notably, the Plan expressly contemplates potential payment to Dugaboy and other

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residual equity holders. Rather than leaving Dugaboy and residual equity holder Hunter Mountain Investment Trust with no interest in the Claimant Trust, the Plan expressly includes residual equity holders in the definition of “Claimant Trust Beneficiaries” as follows:

“*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, **Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.**

Plan, § B, ¶ 27 (emphasis added). The Plan, in turn, makes clear that Dugaboy is a holder of Class A Limited Partnership Interests. *Id.*, ¶ 33; *see also id.*, ¶¶ 24-26, 29-31 (describing the assets to be held by the Claimant Trust for the benefit of Claimant Trust Beneficiaries and the manner in which the Claimant Trust is to be operated).

17. In other words, under the Plan, after all allowed claims are paid in full plus interest, the assets of the trust and any payment from the operation of the Claimant Trust goes to Dugaboy (and Hunter Mountain, as a holder of Class B/C Partnership Interests). *Id.*, ¶¶ 33-36.

**E. There Is Credible Evidence Demonstrating That The Estate’s Value Has Changed**

18. Since the entry of the Court’s Plan Confirmation Order, the Debtor’s financial outlook has changed, making the Amended Liquidation Analysis/Financial Projections on which the Court based its Plan Confirmation Order inapplicable. Indeed, there is every reason to believe that the value of the estate has changed markedly since Plan confirmation. Not only do many of the assets held by the estate fluctuate in value based on market conditions, but Dugaboy is aware

that many of the major assets of the estate have been liquidated or sold since Plan confirmation, resulting in increased value to the estate.

19. Specifically, Dugaboy’s information relating to estate value as of June 1, 2022 is as follows:

<b>Highland Capital Assets</b>	<b>Value in Millions</b>	
	<b>Low</b>	<b>High</b>
Cash as of Feb. 1, 2022 <sup>9</sup>	\$125.00	\$125.00
Recently Liquidated		
Highland Select Equity	\$246.30	
Highland MultiStrat Credit Fund	\$55.00	
Highland Restoration Cap.	\$51.44	
MGM Shares	\$26.00	
Portion of HCLOF	\$37.50	
Total of Recent Liquidations	\$416.24	\$416.24
<b>Current Cash Balance</b>	<b>\$541.24</b>	<b>\$541.24</b>
Remaining Assets		
Highland CLO Funding, Ltd.	\$37.50	\$37.50
Korea Fund	\$18.00	\$18.00
SE Multifamily	\$11.98	\$12.10
Affiliate Notes	\$50.00	\$60.00
Other (Misc. and legal)	\$5.00	\$20.00
<b>Total (Current Cash + Remaining Assets)</b>	<b>\$663.72</b>	<b>\$688.84</b>

20. Likewise, the total value of allowed claims has changed since Plan confirmation. The Debtor and Reorganized Debtor have settled some creditor claims and seen others dismissed, making estimates given during the Plan confirmation hearing obsolete. The disparity between the projected payments to creditors and the actual payments made according to the Post-Confirmation Report for the quarter ending June 30, 2022, should concern the Court and the creditors and

<sup>9</sup> Based on information and belief, the February 1, 2022 cash figure is the best estimate of the estate’s cash position at that time.

stakeholders who do not possess the information in the hands of the Plan Oversight Committee (comprised of certain, select claimholders), which should necessitate some additional disclosure.

As mentioned, at this point, virtually all the Debtor’s operating assets have been sold.

21. Further, the post-confirmation reports filed by the Debtor do not provide any information to creditors regarding the prospect of payment and the expectation of future payment. Specifically, the report for the quarter ending June 30, 2022, reflects that only approximately \$7.1 million dollars has been paid to creditors, notwithstanding that the Reorganized Debtor and/or Claimant Trust are holding huge amounts of cash as a result of the asset sales reported above.

**E. Dugaboy’s Appellate Rights Are Compromised By Outdated Projections**

22. The Court’s repeated description of Dugaboy’s interest in the estate as “remote” is problematic for other reasons as well. As this Court is aware, Dugaboy has appealed several orders issued by the Court in HCMLP’s bankruptcy proceedings, both to the District Court for the Northern District of Texas and the Fifth Circuit Court of Appeals. *See, e.g.*, Case No. 22-10189 (5th Cir.); Case No. 21-90011 (5th Cir.); Case No. 21-cv-01295 (N.D. Tex.); Case No. 21-00546 (N.D. Tex.).

23. At least one of those appeals has been dismissed because the appellate court determined that Dugaboy lacked standing to pursue it. *See, e.g., Highland Capital Mgmt. Fund Advisors, L.P., et al. v. Highland Capital Mgmt., LP*, Case No. 3:21-cv-01895-D (N.D. Tex.), Dkt. 44, at 4. This Court’s prior finding that Dugaboy’s interest in the bankruptcy proceedings is “remote” and “contingent” no doubt played a role in these dismissals. In particular, the appellate courts have relied upon a Fifth Circuit decision—*In re Coho Energy*—which stands for the proposition that an appellant must possess an economic interest in the outcome of an appeal that is not remote or contingent at the time the appeal is heard. Under *Coho*, a party that may have

had standing at the time of filing its appeal under 11 U.S.C. § 1109 may be subjected to a higher and stricter standard for standing later in the appellate process.

24. Dugaboy has appealed the dismissal of one of its appeals to the Fifth Circuit Court of Appeals and has raised in its appellate briefing the wisdom and statutory basis for the Court’s opinion in *Coho*. In particular, Dugaboy has argued that *Coho*’s iteration of standing cannot be correct because the value of estate assets fluctuates during and after bankruptcy, such that the value of interests held by creditors and residual equity holders likewise fluctuates over time. Standing thus cannot be captured at a single point in time but must account for these potential fluctuations and acknowledge that fluctuations can place a particular party “in the money” such that decisions issued in bankruptcy can cause that party harm.

### **III. DUGABOY HAS STANDING IN THESE BANKRUPTCY PROCEEDINGS**

25. The Plan, on its face, gives Dugaboy an interest in the estate. Accordingly, and as this Court has acknowledged (*see* Plan Confirmation Order, ¶ 17), Dugaboy has standing to raise issues affecting the estate and Dugaboy’s interest in it, including by filing the present motion seeking disclosure of the current value of assets held by the Claimant Trust. No other Court can hold the valuation hearing requested by Dugaboy.

26. First, Dugaboy has statutory standing to be heard and to object to actions taken by the Debtor and the Claimant Trustee in these bankruptcy proceedings. Specifically, the Bankruptcy Code gives any “party in interest” the right to participate in a debtor’s chapter 11 proceedings. *See* 11 U.S.C. § 1109(b). While neither 11 U.S.C. § 1109(b) nor any other section in the Bankruptcy Code specifically defines the term “party in interest,” section 1109(b) provides a non-exclusive list of entities that fall within the meaning of “party in interest” for the purposes of a chapter 11 proceeding. *See Kipp Flores Architects, L.L.C. v. Mid-Continent Cas. Co.*, 852

F.3d 405, 413 (5th Cir. 2017). This non-exclusive list “broadly includes debtors, creditors, trustees, indenture trustees, and equity security holders.” *Id.* Other courts and authorities have similarly concluded that parties in interest “include not only the debtor, but anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.” *Adair v. Sherman*, 230 F.3d 890, 894 n. 3 (7th Cir. 2000); *see also* 4 COLLIER ON BANKRUPTCY ¶ 502.02 (16th ed. 2020) (“In the context of a chapter 11 case in particular, the term ‘party in interest’ expressly includes the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee.”).

27. Further, any party in interest may raise and may appear and be heard on any issue in a case under [Chapter 11].” 11 U.S.C. § 1109(b). Indeed, Section 1109(b) “has been construed to create a broad right of participation in Chapter 11 cases.” *In re Global Indus. Technologies, Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) (quoting *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 214 n.21 (3d Cir. 2004)).

28. Second, Dugaboy also has Article III standing to be heard in these bankruptcy proceedings. As the Supreme Court of the United States recently observed and held, Congress long ago abolished the requirement of a minimum amount in controversy for purposes of establishing related federal question jurisdiction. *See Uzuegbunam v. Preczewski*, \_\_\_ U.S. \_\_\_, 141 S. Ct. 792, 802 (2021) (“But Congress abolished the statutory amount-in-controversy requirement for federal question jurisdiction in 1980...And we have never held that one applies as a matter of constitutional law.”) (internal citation omitted). The absence of a minimum amount in controversy requirement under Section 1334 indicates that it should receive a parallel construction. Indeed, in *Uzuegbunam*, the majority held that nominal damages or compensatory damages of one dollar (\$1.00) are sufficient to establish the redressability requirement under

Article III.

29. As the court is aware, there is more than \$1 in controversy here. Indeed, depending upon how the estate is managed post-confirmation, Dugaboy stands to recover hundreds of thousands of dollars as a residual equity holder. And regardless of the amount of that recovery, Dugaboy has a very real interest in how the estate is managed by the Reorganized Debtor and the Claimant Trustee because that management will dictate whether and how much Dugaboy receives after payment of all creditors of the estate.

30. Third, as a contingent beneficiary of a Delaware statutory trust, Dugaboy is entitled to financial information relating to the trust. Indeed, “[i]n most jurisdictions any beneficiary may petition the trustee to account, regardless of whether the beneficiary is a current beneficiary, a remainder beneficiary, whether the remainder interest is vested or contingent (although accounting rights of contingent beneficiaries are limited in some jurisdictions);<sup>10</sup> or a beneficiary who will receive distributions from the trust only through the trustee’s exercise of discretion.” Alan Newman, George Gleason Bogert, George Taylor Bogert, Amy Morris Hess, *Bogert’s The Law of Trust and Trustees* (June 22), § 967 (internal citations omitted).

31. Delaware law does not distinguish between current and contingent beneficiaries nor does it in any way restrict the rights of contingent beneficiaries to request financial information from the trustee. To the contrary, Delaware follows the Restatement (Third) of Trusts, under which the trustee may be required to account not only to current beneficiaries, “but also to other beneficiaries who will or may be entitled to income or principal in the future, including beneficiaries whose interests are contingent.” RESTATEMENT (THIRD) OF TRUSTS, § 83,

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<sup>10</sup> Delaware statute contains no such restriction.

cmt. b; *see also Frederick-Conaway v. Baird*, 159 A.3d 285, 298 n.52 (Del. 2017) (citing to the Restatement and noting that the Court looks to the Restatement for guidance on trust law); *J.P. Morgan Trust Co. of DE v. Fisher*, 2019 WL 6605863, at \*6 (Del. Ch. Dec. 5, 2019) (citing the Restatement for the proposition that a trustee “ordinarily has a duty promptly to respond to the request of any beneficiary for information concerning the trust and its administration, and to permit beneficiaries on a reasonable basis to inspect trust documents, records, and property holdings”). As the Restatement explains, “[t]his breadth of beneficiary rights . . . is essential to the enforceability of a meaningful duty of impartiality.” *Id.*

32. So, whether as a party in interest under 11 U.S.C. § 1109(b), a contingent beneficiary of the Claimant Trust with information rights pursuant to Delaware law, or for purposes of Article III, Dugaboy has the requisite standing and a right to the information it is seeking.

#### **IV. THE COURT SHOULD CONDUCT AN EVIDENTIARY HEARING REGARDING THE VALUE OF THE ESTATE AND THE ASSETS HELD BY THE CLAIMANT TRUST**

33. In addition to issuing a finding that Dugaboy has standing to appear, be heard, and object in these bankruptcy proceedings, the Court should conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and the Claimant Trustee of the value of the estate and all assets held by the Claimant Trust that are available for distribution to creditors and residual equity holders. At a minimum, the hearing would provide valuable information regarding:

- The cash held by the Reorganized Debtor and various entities controlled by the Reorganized Debtor;
- How the cash was acquired and, more specifically, what assets were sold or liquidated;
- How the amounts received for assets sold or liquidated compares to the projections

made by the Debtor at the time of Plan confirmation;

- The value of estate assets still held for the benefit of the estate and its creditors, whether held by the Reorganized Debtor or the Claimant Trust;
- The post-confirmation expenses incurred or to be incurred pursuant to contractual obligations by the estate and its professionals;<sup>11</sup>
- The claims that must be paid prior to the interests of Dugaboy and Hunter Mountain springing into existence;
- Expected professional fees, based at a minimum on the post-confirmation engagement letter with Mr. Seery and/or the agreement entered into between the Debtor and Mr. Seery regarding post-confirmation management of the Debtor and Mr. Seery's compensation package to be paid by the estate.

34. Such a hearing would benefit not only Dugaboy in ascertaining the value of its current interest in the estate but also stands to benefit the estate and its creditors in two core ways. First, there are currently pending adversary proceedings seeking to recover value for HCMLP's estate, when no such additional value is necessary to pay creditors in full and which could be brought to a swift close, allowing creditors to be paid. Second, professionals associated with the estate—including but not limited to Mr. Seery, Pachulski, Development Specialists, Inc., Kurtzman Carson Consultants, Quinn Emanuel, Marc Kirschner, and Hayward & Associates—are continuing to incur millions of dollars a month in professional fees, thereby further eroding an estate that is either solvent or can be bridged by a settlement that would pay the spread between current assets and current allowed creditor claims. If at the hearing the Court finds that the estate is solvent or the spread is minimal, it can order mediation to settle the estate. Again, a quick resolution of all outstanding proceedings can only benefit the estate and its creditors.

35. The idea that the estate will incur an additional \$20+ million in legal fees and

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<sup>11</sup> The Debtor's Post-Confirmation Report for the quarter ending March 31, 2022, shows total post-Effective Date disbursements by the estate of approximately \$81.9 million. *See* Dkt. 3325 at p. 2. The same Report projects additional expenditures of approximately \$211 million.

success bonuses when the estate can be finally resolved now should be of concern to the Court. The Court should not encourage a repeat of the WRT case (which incidentally was managed by Golden & Associates and David Pauker, who is a member of the Oversight Board for the Claimant Trust).

36. Dugaboy is likewise concerned that very few distributions have been made thus far to creditors. Dugaboy recognizes that the various trust agreements provide great latitude to the Claimant Trustee, but the fact that allowed claims are incurring interest, and it is unknown whether the Claimant Trust is earning a return equal to that being incurred on creditor claims, is another cause for concern and a reason to require the Reorganized Debtor and the Claimant Trust to provide this information at an evidentiary hearing.

### CONCLUSION

WHEREFORE, Dugaboy respectfully requests that the Court enter an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now, without further pursuing continued expensive and protracted litigation and without incurring additional enormous professional fees.

IN THE ALTERNATIVE, Dugaboy requests that the Court appoint a neutral to review all relevant financials of the Debtor and to provide a report to the Court regarding the current value of the estate.

Dated: September 21, 2022

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Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, the undersigned, hereby certify that on September 21<sup>st</sup>, 2022, a true and correct copy of the above and foregoing was served via the Court's ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case as follows:

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/s/ Douglas S. Draper  
Douglas S. Draper

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

In re: \* Chapter 11  
\*  
HIGHLAND CAPITAL MANAGEMENT, \* Case No. 19-34054 (SGJ)  
L.P. \*  
\*  
Debtor \*  
\*

\*\*\*\*\*

**THE DUGABOY INVESTMENT TRUST’S OPPOSITION TO THE HIGHLAND  
PARTIES’ MOTION TO QUASH SUBPOENAS SERVED BY THE DUGABOY  
INVESTMENT TRUST OR FOR A PROTECTIVE ORDER**

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The Dugaboy Investment Trust (“Dugaboy”) respectfully submits this Opposition to the Highland Parties’ Motion to Quash Subpoenas as Served by The Dugaboy Investment Trust or for a Protective Order (the “Motion to Quash”) [Doc. No. 3520], filed by Highland Capital Management, L.P. (“Highland” or the “Debtor”), the reorganized debtor in the above-captioned case, HCMLP GP LLC (the “Highland GP”), the Highland Claimant Trust (the “Claimant Trust”) and Development Specialists, Inc. (“DSI”) (collectively, the “Highland Parties”). The Motion to Quash asks this Court to quash subpoenas issued to the Highland Parties by Dugaboy on August 31 and September 1, 2022 (the “Subpoenas”). For the reasons stated below, the Court should deny the Motion to Quash.

## **BACKGROUND**<sup>1</sup>

1. Dugaboy served the Subpoenas on the Highland Parties on August 31 and September 1, 2022, in conjunction with Dugaboy’s pending Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust [Doc. 3382], filed by Dugaboy on June 30, 2022, as amended by the Supplemental and Amended Motion for Determination of the Value of the Estate and Assets held by the Claimant Trust [Doc. No. 3533] on September 21, 2022 (jointly, the “Valuation Motion”). The Valuation Motion seeks a determination by this Court of the current value of the Estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors and beneficiaries of the Claimant Trust.

2. In the Motion to Quash, the Highland Parties argue that the Subpoenas should be quashed because (1) they are an improper attempt to obtain the relief sought in the Valuation Motion before this Court has ruled on the Valuation Motion; (2) Dugaboy lacks standing to issue the Subpoenas; (3) the Highland subpoena should have been issued pursuant to Federal Rule of Civil Procedure 34 rather than Rule 45; and, (4) the Subpoenas are unduly burdensome. These grounds are the same as or similar to those asserted by the Debtor in the Reorganized Debtor’s Opposition to Motion for Determination of Value [Doc. 3465] (the “Valuation Opposition”). Dugaboy filed a Reply in Support of its Motion for Determination of Value (“Reply”) simultaneously with the filing of this Opposition. Dugaboy reiterates and incorporates herein by reference all of the arguments made in the Valuation Motion and its Reply as if set forth herein in their entirety. For the reasons stated therein and below, the Highland Parties’ Motion to Quash should be denied.

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<sup>1</sup> Capitalized terms used herein, but not defined, have the same meanings ascribed to them in the Valuation Motion, as hereafter defined, and the Reply filed in support of the Valuation Motion.

**A. The Subpoenas Are Procedurally Proper**

3. The Highland Parties initially argue that the Subpoenas are premature because this Court has not yet ruled on Dugaboy's Valuation Motion, including whether Dugaboy is entitled to the information sought by the Subpoenas. That is not a basis to quash the Subpoenas. Notably, at the time Dugaboy issued the Subpoenas, it assumed that the Court would consider the issues of Dugaboy's entitlement to the information sought and hear evidence regarding valuation simultaneously. Instead, the Court converted the hearing on the Valuation Motion into a status conference, and the Highland Parties ask the Court to rule first on Dugaboy's entitlement to the information sought in the Valuation Motion and to hold an evidentiary hearing on valuation only after that determination is made. In other words, it is the Highland Parties' Motion to Quash that is premature. If the Court rules (whether on the papers, as Dugaboy has requested, or at the November 14 status conference) that Dugaboy is entitled to the information sought, then there is no reason to quash the Subpoenas; instead, they should become effective and enforceable. On the other hand, if the Court denies Dugaboy access to the information it seeks, then the issues raised in the Motion to Quash will be moot.

4. Citing to Bankruptcy Rule 7001(2), the Highland Parties further contend that Dugaboy should have filed an adversary proceeding to obtain the relief requested in the Valuation Motion and the Subpoenas. But as set forth in Dugaboy's Reply in support of the Valuation Motion and below, this argument is wrong.

5. That rule is inapplicable here. Dugaboy's Valuation Motion and the related Subpoenas do not seek a determination of the validity, priority or extent of a lien or interest in property. Instead, Dugaboy simply asks the Court to determine the current *value* of the property and assets that are held by the Estate and the Claimant Trust for distribution to creditors and

beneficiaries. The subpoenaed documents are relevant to that determination, and Dugaboy did not need to file an adversary proceeding to obtain the information.

6. Finally, contrary to the Highland Parties' assertions, Dugaboy was not required to serve discovery requests on the Debtor pursuant to Federal Rule of Civil Procedure 34 as opposed to serving a subpoena under Rule 45. Rule 45 expressly authorizes the issuance of subpoenas to obtain documents, and the Rule is not limited in scope to non-parties or third parties. Moreover, given that the Valuation Motion has been pending for over four months, the Highland Parties have had plenty of time within which to assemble responsive documents, and Rule 45's 14-day response deadline is sufficient and appropriate. In any event, if this Court believes that the time stated in the Subpoenas for a return of the requested documents is too short, then the Court may grant an extension.

**B. The Subpoenas Seek Discoverable Information And Are Not Unduly Burdensome**

7. The Highland Parties also resist the Subpoenas because they say the information sought is confidential and unduly burdensome to produce.

8. As set forth in Dugaboy's Reply in support of the Valuation Motion, the Highland Parties' claim of confidentiality makes no sense and is not supported by any evidence (or even any explanation). The Highland Parties have not identified any reason why the information should be treated as confidential, particularly given this Court's view of transparency and the fact that this type of information typically is disclosed in bankruptcy proceedings as a matter of course. Nor do the Highland Parties argue that the information is protected by any other privilege or protective order, and they fail to point to any other basis for a finding that the materials are confidential. In any event, if there is some plausible basis to treat the information as confidential, Dugaboy would be willing to enter into a reasonable and appropriate protective order to alleviate the Highland Parties' concerns.

9. Further, it is hard to understand the Debtor's argument that disclosure of the information would be unduly burdensome. Almost all of the Debtor's the assets have already been monetized, making the need to delve into the assets and obligations of ancillary entities minimal. Indeed, the Debtor should have all of the information requested readily available. The Highland Parties proffer no real basis for their claim of undue burden, which the Court should reject.

### **C. Dugaboy Has Standing**

10. Finally, the Highland Parties contend that because Dugaboy is a contingent beneficiary of the Claimant Trust, it does not have standing to issue the Subpoenas. They further argue that even the Claimant Trust Beneficiaries cannot obtain the subpoenaed documents.<sup>2</sup> These assertions are wrong, as fully discussed in Dugaboy's Valuation Motion and Reply in support thereof, which are incorporated herein by reference. Dugaboy is a party in interest under 11 U.S.C. § 1109(b), has equal rights to information as vested beneficiaries under Delaware law, and has Article III standing. Moreover, the Claimant Trust Beneficiaries are entitled to the information under § 3.12 of the Claimant Trust Agreement, and so is Dugaboy.

### **CONCLUSION**

For all of the reasons stated above, the Dugaboy Investment Trust requests that the Highland Parties' Motion to Quash be denied. The Dugaboy Investment Trust further requests all general relief to which it may be entitled.

Dated: November 1, 2022.

Respectfully submitted,

By: /s/Douglas S. Draper

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<sup>2</sup> Reorganized Debtor's Objection to Motion for Determination of Value [Doc. 3465], 11 and n. 6.

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### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, the undersigned, hereby certify that on November 1, 2022, a true and correct copy of the above and foregoing was served via the Court's ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case as follows:

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

**In re:** § **Case No. 19-34054-sgj11**  
§  
**Highland Capital Management, L.P.** § **Chapter 11**  
§  
**Reorganized Debtor** § **Relates to Dkt. No. 3520**  
§  
§

**LIMITED OPPOSITION TO THE HIGHLAND PARTIES’ MOTION TO QUASH  
SUBPOENAS SERVED BY THE DUGABOY INVESTMENT TRUST  
OR FOR A PROTECTIVE ORDER**

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Hunter Mountain Investment Trust (“Hunter Mountain”) files this *Limited Opposition* (the “Opposition”) to that certain *Motion to Quash Subpoenas Served by the Dugaboy Investment Trust or for a Protective Order* [**Dkt. No. 3520**] (the “Motion to Quash”) filed by Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), the reorganized debtor, HCMLP GP LLC (“Highland GP”), the Claimant Trust as defined in the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified)* [**Dkt. No. 1943**] (the “Plan”), and Development Specialist, Inc. (“DSI,” collectively with HCMLP, Highland GP, and Claimant Trust, the

“Highland Parties”). The Highland Parties’ Motion to Quash relates to certain subpoenas (the “Subpoenas”) served by the Dugaboy Investment Trust (“Dugaboy”).

### PRELIMINARY STATEMENT

1. The Highland Parties’ Motion to Quash relates to certain subpoenas (the “Subpoenas”) served by the Dugaboy Investment Trust (“Dugaboy”). Hunter Mountain is not a party to those subpoenas and only files this Limited Response to address the Highland Parties’ argument that no discovery into valuation should be permitted.

### LEGAL ARGUMENT

2. According to the Highland Parties, the Subpoenas must be quashed because, in part, they are premature unless and until the Bankruptcy Court decides that Dugaboy is entitled to relief on the Motion for Valuation. Simultaneously, the Highland Parties argue that Dugaboy is not entitled to relief under the Motion for Valuation because Dugaboy’s assumption that it will be “in the money” is faulty. *See Reorganized Debtor’s Objection to Motion for Determination of Value [Dkt. No. 3465]* (the “Objection”) at ¶4.

3. In opposition to the Motion for Valuation, the Highland Parties argue, amongst other things, that:

Dugaboy’s assumption that it will be “in the money” if the assets are liquidated for sufficient proceeds to pay senior creditor and equity classes is faulty. Regardless of the value at which the assets are monetized, creditors and senior equity holders will not be paid in full until the threat of Mr. Dondero’s continued pursuit of his “litigation strategy” ends. The Claimant Trust will not distribute all proceeds from the Highland Entities’ assets until that time because material indemnification obligations will remain.

*See Opposition*, ¶4.

4. The Highland Parties assert that regardless of the value of Assets, because of their ongoing indemnification obligations to professionals working for them and the Litigation Sub-

Trust, there will never be enough cash to put the Equity Holders “in the money.” *See* Opposition, ¶22. So according to the Highland Parties, there is no amount of Assets that could ever satisfy the Obligations so no party is allowed discovery into what the Asset and Obligations are. This reasoning is circular, at best.<sup>1</sup>

5. Then, in the Motion to Quash, the Highland Parties argue that the discovery on the topic of valuation is irrelevant, stating that: “[i]f the Valuation Motion is granted, Dugaboy will be entitled to appropriate discovery for such accounting. But here, enforcement of Subpoenas at this stage would give Dugaboy the ultimate relief it seeks—before any determination is made that it is entitled to such relief.” *See* Motion to Quash, ¶21.

6. The Highland Parties have staked the position that the Motion for Valuation should be denied because there are not enough Assets, yet discovery on the topic of the amount of Assets is irrelevant. The Equity Holders have to raise a defense to the Highland Party’s argument and, as such, are expressly permitted to propound discovery under FED. R. CIV. P. 26(b)(1), FED. R. BANKR. P. 7026, and FED. R. BANKR. P. 9014(c).

7. There is no basis for quashing discovery because the other side says that you will not be able to prove your case. Rather, the “purpose of discovery is to allow the parties to obtain full knowledge of the facts so they can present their best case to the fact-finder.” *Admin. Comm. of Koch Indus. Employees' Sav. Plan v. Lang Ho*, No. 4:21-CV-00222, 2021 WL 2376564, at \*2 (S.D. Tex. June 10, 2021) (*citing Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

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<sup>1</sup> The reasons given by the Highland Parties is that indemnification obligations to professionals retained by the Claimant Trust are ongoing. But looking at the Kirschner Adversary Proceeding, this is exactly the problem that Hunter Mountain seeks to remedy. Perpetuating litigation in order to secure recoveries to fund indemnification obligations that may eventually arise in that same litigation hardly seems in keeping with the purpose of the Claimant Trust to “manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period.” Claimant Trust Agreement, ¶2.3(b)(i).

8. Once entitled to discovery on these issues is established, the parties can work towards a consensual scope of subpoenas to meet all requirements under the applicable Federal Rules of Bankruptcy Procedure.

### CONCLUSION

9. The Highland Parties have put the value of the Assets and Obligations directly at issue in consideration of the Motion for Valuation, and as such, the applicable Federal Rules of Bankruptcy Procedure plainly permit discovery into the Assets and Obligations before the adjudication of the Motion for Valuation.

**Respectfully submitted:**

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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this November 1, 2022.

*/s/ Louis M. Phillips*

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**COUNSEL FOR HUNTER MOUNTAIN INVESTMENT TRUST**

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

**In re:** § **Case No. 19-34054-sgj11**  
§  
**Highland Capital Management, L.P.** § **Chapter 11**  
§  
**Reorganized Debtor** § **Relates to Dkt. No. 3533**  
§  
§

**REPLY IN SUPPORT**

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Pursuant to that certain *Notice of Status Conference and Briefing Schedule* [Dkt. No. 3543] Hunter Mountain Investment Trust (“Hunter Mountain”) files this *Reply* to that certain to the *Reorganized Debtor’s Objection to Motion for Determination of the Value* [Dkt. No. 3465] (the “HCMLP Objection”) filed by Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), which was filed in response to the *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Dkt. No. 3382] (the “Initial Valuation Motion”) filed by The Dugaboy Investment Trust (“Dugaboy”), as supplemented and amended by *Supplemental and Amended*

*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Dkt. No. 3533] (the “Supplement,” and together with the Initial Valuation Motion, the “Valuation Motion”). Hunter Mountain previously filed *Limited Response in Support of Certain Requested Relief* [Dkt. No. 3467] in support of the Initial Valuation Motion (the “HMIT Response”).

#### PRELIMINARY STATEMENT

1. Since the filing of the HMIT Response, HCMLP filed its *Post Confirmation Quarterly Report for the Third Quarter of 2022* [Dkt. No. 3582] (the “Q3 Report”) which states that HCMLP distributed \$248,999,332 to general unsecured claims, for a cumulative total of \$255,201,228 which is 64% of the total allowed general unsecured claims of \$387,485,568. *See* Q3 Report, ¶3. This distribution is much greater than the “Total Anticipated Payments Under Plan” to general unsecured claims of \$205,144,544. *Id.* Therefore, the value of the Assets<sup>1</sup> appears to be far greater than was anticipated at the time of confirmation of *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified)* [Dkt. No. 1943] (the “Plan”).<sup>2</sup> In the HMIT Response, HMIT set forth why, as a Holder of a Contingent Claimant Trust Interest and a defendant in the Kirschner Adversary Proceeding,<sup>3</sup> information regarding the value of the Assets and Obligations<sup>4</sup> is material. Now, given that the Assets appear to be far greater than anticipated, there is even more reason for HCMLP to provide information informing whether Hunter Mountain’s Contingent Claimant Trust Interest will vest, or could vest if accruing Obligations are mitigated.

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<sup>1</sup> As defined in the HMIT Response

<sup>2</sup> Capitalized terms not otherwise defined herein take their meaning from the Plan

<sup>3</sup> As defined in the HMIT Response

<sup>4</sup> As defined in the HMIT Response

**A. The Court has authority to compel valuation information.**

2. HCMLP argues that there is no statute, rule, or judicial opinion authorizing Holders of Allowed Equity Interests to obtain information regarding Assets or Obligations. But case law is clear that bankruptcy courts have “broad authority” under sections 105(a) and 1142(b) of the Bankruptcy Code to implement chapter 11 plans. *In re Goldblatt Bros., Inc.*, 132 B.R. 736, 741 (Bankr. N.D. Ill. 1991).

3. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Section 1142(b) of the Bankruptcy Code provides that

[t]he court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act ... that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b). “Section 1142(b) ‘empowers the bankruptcy court to enforce the unperformed terms of a confirmed plan.’ ” *In re Lehman Bros. Holdings Inc.*, 591 B.R. 153, 158–59 (Bankr. S.D.N.Y. 2018); *In re WorldCom, Inc.*, Case No. 02-13533, 2009 WL 2959457, at \*7 (Bankr. S.D.N.Y. May 19, 2009) (citing *United States Brass Corp. v. Travelers Ins. Group, Inc.* (*In re United States Brass Corp.*), 301 F.3d 296, 306 (5th Cir. 2002) ).

4. In the Plan, the Bankruptcy Court ***expressly*** retained jurisdiction, citing sections 105 and 1142 of the Bankruptcy Code, to determine or classify any Equity Interest and ensure that distributions to Holders of Allowed Equity Interests are accomplished. Plan, ¶ XI.<sup>5</sup>

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<sup>5</sup> “Pursuant to sections 105 and 1142 of the Bankruptcy Code ... the Bankruptcy Court shall ...retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to: ...determine,... classify, estimate or establish the priority, ...or subordinated status of any ... Equity Interest [and to] ensure that distributions to Holders of ... Allowed Equity Interests are accomplished pursuant to the provisions of this Plan.”

5. The Plan is to be implemented through the Claimant Trust, which's purpose, in part, is satisfying Class B/C Limited Partnership Interests pursuant to Terms of the Plan. *See* Claimant Trust Agreement, ¶2.2 [Dkt. No. 3465-1].

6. So while section 1142(b) of the Bankruptcy Code does not confer substantive rights beyond what is provided for in a plan, it does empower the Bankruptcy Court to enforce unperformed terms of the Plan. *In re U.S. Brass Corp.*, 301 F.3d 296, 306 (5th Cir. 2002).

7. Courts have a broad scope of power to issue “compliance orders” under section 1142(b) of the Bankruptcy Code, and have issued such orders to compel distributions on claims as required by the plan. *See* 8 Colliers on Bankruptcy, ¶ 1142.03[1] (citing *In re WorldCom, Inc.*, 2009 Bankr. LEXIS 1136 (Bankr. S.D.N.Y. May 19, 2009); *In re Goldblatt Bros., Inc.*, 25 C.B.C.2d 953, 132 B.R. 736 (Bankr. N.D. Ill. 1991)). Here, the valuation information sought is to aid in implementing the unperformed terms of the Plan, that include satisfying Class B/C Limited Partnership Interests as beneficial interests in the Claimant Trust, upon satisfaction of the claims to which these interests are subordinated.

8. Therefore, the Bankruptcy Court has authority and jurisdiction to enter an order on the requested valuation information to implement provisions of the Plan that provide for distributions to Holders of Allowed Equity Interests.

9. Further as Hunter Mountain began the HMIT Response,

[N]o Professional, Claimant Trust Beneficiary, nor this Court would support the idea that the Plan provides that the Litigation Sub-Trust should pursue litigation against Holders of Equity Interest to generate a recovery with which to pay distributions to those same Holders of Equity Interest, less the costs of that litigation.

HMIT Response, ¶1. The Claimant Trust documents provide that it is established for the purpose of satisfying General Unsecured Claims, Allowed Subordinated Claims, and to the extent

provided under the Plan, Allowed Class A and B/C Limited Partnership Interests. Claimant Trust Agreement at ¶2.3(a).

10. Under the Claimant Trust documents, Holders of Contingent Beneficiary Interests are owed the duty of good faith and fair dealing under Delaware law. *See id.* at ¶¶2.1(b), 4.3. Under Delaware law, this doctrine is a judicial convention designed to protect the spirit of an agreement when, without violating an express term of the agreement, one side denies the other side the fruits of the parties' bargain. *Chamison v. Healthtrust, Inc.*, 735 A.2d 912, 920-21 (Del.Ch.1999), *aff'd*, 748 A.2d 407 (Del. 2000). It requires the court to extrapolate the spirit of the agreement from its express terms and based on that "spirit", determine the terms that the parties would have bargained for to govern the dispute had they foreseen the circumstances under which their dispute arose. *Id.*

11. Here, the situation painted by HCMLP is that because Indemnification Obligations<sup>6</sup> are ongoing then distributions of Assets to Claimant Trust Beneficiaries will be delayed, and therefore, Assets will continue to be spent on litigating Estate Claims regardless of whether the Assets are sufficient to fund full distributions to Claimant Trust Beneficiaries right now. *See* HCMLP Objection, ¶¶22-23. So the Assets over Obligations ratio is continuously decreasing so as time passes this continuous depletion of Assets will eventually require reliance upon litigation of Estate Claims to replace such diminution. This all of course does nothing to satisfy distributions to Claimant Trust Beneficiaries, but instead, funds litigation to drain assets so that the litigation is now required. This does not protect the spirit of the Claimant Trust and compelling valuation information at this time would mitigate this inherently untenable situation.

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<sup>6</sup> As defined in *Motion for Entry of an Order (i) Authorizing the (a) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* [Dkt. No. 2491]

**B. The valuation information is relevant.**

12. HCMLP argues that any information regarding required to determine whether Equity Holders are “in the money” is irrelevant because Equity Holders are not “in the money.” In assuming its conclusion, HCMLP relies upon the Indemnification Obligations as being a material roadblock to the Contingent Beneficiary Interests ever vesting. *Id.* at 23.

13. But as set forth in the HMIT Response, this is the point of the Equity Holders, who are also defendants in the Kirschner Adversary Proceeding, seeking valuation information at this time. Even if there is a deficit of Assets over Obligations, knowledge of the amount of such a deficit, with information about Assets remaining, could generate a picture of a current deficit, and better the possibility of a resolution that could create a maximization of the Asset value and a capping of the Obligations, including Indemnification Obligations.

14. Such information regarding Assets and Obligations is already compiled and distributed quarterly to current Claimant Beneficiaries. Claimant Trust Agreement, ¶3.12(a),(b). Further, the trust documents expressly provide that the Claimant Trustee is to redact any portion of such reports to avoid the public disclosure of confidential information *Id.* at (b). Given that these reports are thus already redacted to remove confidential information, the requested limited valuation information places no further burden on HCMLP nor the Claimant Trustee.

15. Without an exchange of limited valuation information (which is readily available to HCMLP), then HCMLP’s bleak scenario will likely come to fruition where Assets are not distributed to Claimant Trust Beneficiaries, and instead held to fund possible future Obligations, whilst those same Assets are being depleted by professionals (at a rate of millions per month) to fund litigation which will become necessary if enough Assets are depleted.

16. As a Holder of a Contingent Claimant Trust Interest and a defendant in the Kirschner Adversary Proceeding, it is highly relevant to Hunter Mountain whether the current Assets are enough to satisfy the current Obligations, and if not, what the difference is.

**C. An adversary proceeding is not required.**

17. HCMLP argues that FED. R. BANKR. P. 7001(2) applies to the Motion for Valuation, which requires an adversary proceeding to be brought for a proceeding to determine the validity, priority, or extent of a lien or other interest in property. FED. R. BANKR. P. 7001(d). HCMLP characterizes the request for valuation information as a request for a determination as to the extent of Equity Holder's interests.

18. But the Plan already clearly defines the extent of Equity Holder's interests, which is a Contingent Claimant Beneficiary Trust interest. What is being sought is a valuation of those interests.

19. As Judge Rodriguez recently explained in *Pearl Resources*,

[The Bankruptcy] Code does not define “validity” or “extent,” however, this Court may consider the ordinary meaning of each in determining whether an adversary proceeding is required pursuant to Bankruptcy Rule 7001(2). **...Valuation, however, is “not [an issue of] validity in any guise” and therefore, does not require an adversary proceeding.**

*In re Pearl Res. LLC*, No. 20-31585, 2022 WL 4474131, at \*8 (Bankr. S.D. Tex. Sept. 26, 2022) (emphasis added) (quoting 7 *Collier On Bankruptcy*, ¶ 7001.03 (16th ed. 2017)).

20. There is no requirement for an adversary proceeding to be brought for a valuation of an already established interest or, perhaps more accurately, the value of the property that could fund such interests.

**CONCLUSION**

For the reasons set forth herein and in the HMIT Response, Hunter Mountain supports the request of Dugaboy to compel limited, readily available information regarding the value of the Assets and Obligations at this time.

**Respectfully submitted:**

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*/s/ Louis M. Phillips*

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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this November 1, 2022.

**/s/ Louis M. Phillips**

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

In re: \* Chapter 11  
\*  
HIGHLAND CAPITAL MANAGEMENT, \* Case No. 19-34054 (SGJ)  
L.P. \*  
\*  
Debtor \*  
\*

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**THE DUGABOY INVESTMENT TRUST’S REPLY IN SUPPORT  
OF ITS MOTION FOR DETERMINATION OF VALUE**

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**I. INTRODUCTION**

1. In its Motion, The Dugaboy Investment Trust (“Dugaboy”) seeks a determination by this Court of the current value of the estate (the “Estate”) and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors and beneficiaries of the Claimant Trust (the “Beneficiaries”). In its Objection, the Reorganized Debtor (the “Debtor”) argues that Dugaboy’s Motion should be denied for four core reasons: (i) there is no legal or contractual basis for the requested relief; (ii) Dugaboy seeks the information for an improper purpose; (iii) the information is irrelevant; and (iv) Dugaboy’s Motion is procedurally improper. For the reasons stated below, the Debtor’s objections lack merit and should be rejected.

**II. THE DEBTOR’S OBJECTIONS ARE MERITLESS**

**A. Dugaboy Is Entitled To Disclosure Of The Requested Information**

2. The Debtor initially argues that Dugaboy has no right to the information because it does not cite a specific statute, rule, or case supporting the relief it seeks. The Debtor further argues that Dugaboy is not a beneficiary of the Claimant Trust and, even if it were, the Claimant Trust

Agreement would not require disclosure of valuation information to Dugaboy. The Debtor is wrong on all fronts.

3. First, it would make little sense to require litigants in bankruptcy to cite a statute, rule, or case specifically delineating entitlement to the relief sought as a precondition to awarding the relief. It is axiomatic that bankruptcy courts are courts of equity. And for that reason, parties in interest frequently ask the courts to award relief that is fair and equitable. What is more, this Court previously has explained its view that these bankruptcy proceedings should be an “open kimono.” *See* Ex. A, Hr’g Tr. dated June 10, 2021, at 49:21-50:2. The Debtor asserts no reason why the value of the Estate and the Claimant Trust assets should be hidden from creditors and parties-in-interest. Indeed, the Debtor’s insistence on secrecy flies in the face of this Court’s directive and guidelines from the Executive Office of the United States Trustee (“EOUST”) mandating transparency in bankruptcy proceedings. *See* <http://justice.gov/ust/chapter-11-information>; *see also* 85 Fed. Reg. 82906 (describing the EOUST’s commitment to “uniformity and transparency regarding a debtor’s financial condition and business activities” and “to inform creditors and other interested parties of the debtor’s financial affairs”).

4. Second, the Debtor’s argument that Dugaboy is not entitled to relief it seeks because it is not a current beneficiary of the Claimant Trust is wrong. The Debtor does not dispute that the Claimant Trust Agreement expressly gives Dugaboy Contingent Trust Interests, making it a contingent beneficiary of the Claimant Trust.<sup>1</sup> And under Delaware law, contingent beneficiaries have equal entitlement to seek financial information from a trust. Delaware follows the RESTATEMENT (THIRD) OF TRUSTS, which requires trustees to account both to current beneficiaries

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<sup>1</sup> *See* Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (“Plan”), Article I, ¶ 27; Claimant Trust Agreement, §§ 1.1(h), (m) and 5.1(c).

and “also to other beneficiaries who will *or may* be entitled to income or principal in the future, including beneficiaries whose interests are contingent.”<sup>2</sup> In short, it makes no difference that Dugaboy is a contingent beneficiary; it has a right to the same information as the Claimant Trust Beneficiaries.

5. Nor is there any merit to the Debtor’s argument that the Claimant Trust Beneficiaries themselves have no right to obtain information regarding value. To the contrary, the Claimant Trust Agreement expressly entitles the Claimant Trust Beneficiaries to a broad range of information, including but not limited to the status of the trust’s assets, the balance of cash held by the trust, the status of disputed claims, and the trust’s operating expenses. Opp., Exh. A, § 3.12(b). That the Trustee may have the right to redact portions of those financials is not *carte blanche* for the Trustee to refuse to provide any information. This is because Delaware law requires every trustee to act in good faith in administering his duties. *In re Fruehauf Trailer Corp.*, 369 B.R. 817, 829-30 (Bankr. D. Del. 2007) (“[A] Trustee’s duty to his trust and to his beneficiaries in administering the trust is to exercise the care and skill a man of ordinary prudence would exercise in dealing with his own property in the light of the situation existing at the time.”) (internal citations and quotations omitted). Indeed, the Debtor does not even attempt to explain the Trustee’s limited right of redaction should broadly preclude the disclosure of information contemplated by the Trust Agreement and now requested.

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<sup>2</sup> RESTATEMENT (THIRD) OF TRUSTS, § 83, cmt. b. (emphasis added); *see also Frederick-Conaway v. Baird*, 159 A.3d 285, 298 n. 52 (Del. .2017) (citing to the Restatement and noting that the Court looks to the Restatement for guidance on Trust law); *J.P. Morgan Trust Co. of DE v. Fisher*, 2019 WL 6605863, at \*6 (Del. Ch. Dec. 5, 2019) (citing the Restatement for the proposition that a trustee ‘ordinarily has a duty promptly to respond to the request of *any beneficiary* for information concerning the trust and its administration, and to permit beneficiaries on a reasonable basis to inspect trust documents, records, and property holdings.’ (emphasis added)); Alan Newman et al., *Bogert’s The Law of Trusts and Trustees*, Ch. 46, § 967 (June 2022 Update) (“[i]n most jurisdictions any beneficiary may petition the trustee to account, regardless of whether the beneficiary is a current beneficiary, a remainder beneficiary, whether the remainder interest is vested or contingent.”) (citing RESTATEMENT (THIRD) OF TRUSTS, § 83, cmt. b).

6. To be sure, the Debtor's contention that the information requested by Dugaboy is confidential is curious at best. The information is the type that in most ordinary bankruptcy proceedings would be public, not confidential, and the Debtor has not provided any support for its assertion to the contrary. The assets of the Trust today are largely made up of cash, and disclosure of an entity's cash position cannot be confidential when the entity was created to distribute its cash to its beneficiaries. Nor is the information protected by any other privilege or protective order, and indeed the Debtor has not asserted any privilege or pointed to any other basis in law for protecting the information from disclosure. Additionally, because almost all of the Debtor's assets have already been monetized, the need to delve into the assets and obligations of ancillary entities is minimal. The Debtor's objection on this basis should be rejected.

**B. Dugaboy's Motion Was Filed For A Proper And Necessary Purpose, And Dugaboy Had Standing To File It**

7. The Debtor next contends that Dugaboy's Motion was filed for an "improper purpose," speculating that the sole purpose of the Motion was to establish Dugaboy's appellate standing. The Debtor then posits that Dugaboy lacks standing to pursue any relief in the Court because it cannot meet the "personal aggrieved" test for standing. The Debtor further argues that this Court lacks jurisdiction to determine Dugaboy's standing. Again, the Debtor is wrong on all fronts.

8. The Debtor's first argument ignores the relief requested in the Motion itself. As Dugaboy explained, its main purpose in filing the Motion is to obtain information that is critical to its ability to preserve and realize its contingent interests in this proceeding. *See* Mot., ¶¶ 1, 5-6, 33-36. Based on the Debtor's quarterly Post-Confirmation Reports and information that Dugaboy has been able to ascertain from public sources, the monetization of the Debtor's assets under the Plan will yield sufficient funds to both pay the allowed claims in full and to convert Dugaboy's

Contingent Trust Interest into an Equity Trust Interest. Again, if Dugaboy’s estimations are true, that is information that this Court, all creditors of the estate, and parties-in-interest should know, because it could facilitate swift resolution of these proceedings, related adversary proceedings, and stop further erosion of estate assets.

9. Specifically, recent reporting makes clear that Dugaboy’s “contingent” interest is much more likely than originally projected to be converted into a payable Equity Interest. Notably, at the Confirmation Hearing, the Debtor submitted amended projections [Doc. 1875-1], that reflected total funds available for distribution to unsecured creditors of 194,865,000 and a claims pool of \$ 273,219,000 [Dkt 1875-1 p. 4), exclusive of subordinated claims. At the time, the Debtor estimated that holders of allowed claims would receive approximately \$200,000,000.00. In its latest quarterly report, by contrast, the Debtor estimates that the unsecured creditors will receive \$205,144,544.00 [Dkt. 3582 at p. 7]. Yet the same report shows that through September 30,2022, the Debtor has actually distributed in excess of \$255,201,228—an increase of over 25% than that which was projected at Plan confirmation. The report does not reveal the remaining assets held by the Debtor, which are comprised in a large part of cash and a mix of collateralized loan obligations and property. In short, it seems likely that the Debtor’s available cash and other assets will be sufficient to pay all allowed claims with interest, putting Dugaboy in the money and giving it a cognizable interest in ensuring the Estate is managed in a way to prevent further erosion of its interest.

10. Further, the Debtor is simply wrong that Dugaboy seeks an order from this Court that it has standing in related appellate proceedings. To the contrary, Dugaboy has asked that the Court find that Dugaboy has standing in *these bankruptcy proceedings*, something that this Court unquestionably has jurisdiction to determine. Indeed, the Plan itself contemplates that the Court

would retain jurisdiction “with respect to all matters related to the Chapter 11 Case . . . to the maximum extent legally permissible,” including “to decide or resolve any motions” and to “enter such orders as may be necessary to implement, effectuate, or consummate the provisions of th[e] Plan, the Plan Documents, and all other contracts . . .” Plan, art. XI. Dugaboy cited to District Court rulings regarding its standing only to make the point that this Court’s view of standing matters. Dugaboy does not seek to revisit those rulings in the context of the Motion at issue.<sup>3</sup>

11. In any event, the Debtor’s argument that Dugaboy lacks standing under the “person aggrieved” test conflates bankruptcy court standing with the issue of standing on appeal. As set forth in Dugaboy’s Motion, it has standing to pursue a hearing regarding value of the Estate and the Claimant Trust assets as a party-in-interest under the bankruptcy law and under Article III of the United States Constitution. Mot., ¶¶ 27-32. And as further explained above, at the very least, Dugaboy is entitled to seek the relief it now seeks under Delaware trust law, which vests contingent beneficiaries with the right to seek the very information sought here. *See* Section II.A, *supra*.

### C. The Information Sought By Dugaboy Is Highly Relevant

12. The Debtor also makes the specious argument that evidence of value is irrelevant because the Debtor can never obtain sufficient funds to pay creditors in full in view of the threat of future litigation by Mr. Dondero. This argument not only contravenes the directives of the Plan (which contemplates a monetization of Debtor assets and an exit from bankruptcy within two years) but also makes no sense as a practical matter. Indeed, the fact that the Debtor apparently intends to hold reserves sufficient to prevent the payment in full of allowed claims makes the information sought by Dugaboy *more relevant* because the information would enable Dugaboy (and Hunter

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<sup>3</sup> Drawing on its mistaken assertion that the sole purpose of Dugaboy’s Motion is to establish its appellate standing, the Debtor also argues that the information Dugaboy seeks is irrelevant because, even if there is evidence that Dugaboy is “in the money,” that evidence would not impact any related appeal.

Mountain Investment Trust (“Hunter Mountain”), the other Contingent Trust Interest holder) to ascertain the amount of any potential indemnification obligations and whether there is any possible resolution that could obviate the need for such reserves, permitting the payment of all allowed claims and putting the equity interest holders “in the money.”

13. The information is also relevant because, as discussed in Dugaboy’s Motion, the manner in which the Estate is managed has the potential to affect Dugaboy’s financial interests. It is now apparent that the funds available to the Estate and the Claimant Trust far exceed the projections on which Plan confirmation was based. It appears almost certain that the monetization of the Debtor’s assets will yield enough to pay allowed claims in full. Thus, any recovery from litigation being pursued by the Litigation Sub-Trust will only inure to the benefit of Dugaboy and Hunter Mountain. This leaves Dugaboy and Hunter Mountain in the unique and untenable position of having to pay legal fees to the attorneys for the parties that are suing them. Accordingly, Dugaboy has a significant interest in the requested information in order to determine whether the funds realized from the monetization are or will be sufficient to pay the Allowed Claims in full so that the estate and its professionals do not need to incur substantial fees and costs to pursue unnecessary litigation.

**D. Dugaboy’s Motion Is Procedurally Proper**

14. Finally, the Debtor argues that Dugaboy’s Motion is procedurally improper because Dugaboy should have filed an adversary proceeding to obtain the information it seeks. This too is wrong.

15. In support of its argument, the Debtor cites only to Bankruptcy Rule 7001(2). Rule 7001(2) provides that any action to “determine the validity, priority, or extent of a lien or other interest in property...” is an adversary proceeding. But this is not an action to determine the validity, priority or extent of a lien or interest in property. Dugaboy is not claiming any lien on

property, and Dugaboy's interest in the Estate and the Claimant Trust are established by the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (the "Plan"). Instead, Dugaboy's Motion seeks a hearing to determine the *value* of the property and assets held by the Estate and the Claimant Trust for distribution to creditors and beneficiaries. Dugaboy is not seeking any information that it would not be entitled to request in a Rule 2004 examination.

**E. Court Should Issue An Immediate Ruling On Dugaboy's Entitlement To Seek The Information Requested Based Upon the Briefs Submitted**

16. Dugaboy made its Motion more than four months ago. Since that time, the estate has continued to incur millions of dollars in fees and expenses in connection with the underlying bankruptcy proceedings and various adversary proceedings, including most notably the Kirschner litigation. Although the Court has set a status conference on the Motion for November 14, 2022, Dugaboy hereby requests that the Court make a determination on the parties' briefs that Dugaboy is entitled the information it seeks. As explained in Dugaboy's Motion and herein, that determination can be made as a matter of law, and recent, material changes to the Debtor's estate make an early determination critical.

17. Again, as a matter of Delaware trust law, even a contingent beneficiary like Dugaboy may seek information regarding estate value. And the Debtor proffers no legitimate reason—under Delaware trust law, bankruptcy law, the Claimant Trust Agreement, or otherwise—why the information sought should not be made available to creditors, Claimant Trust Beneficiaries, holders of Contingent Trust Interests, and any other parties-in-interest in bankruptcy.

18. Further, there is an urgent need to obtain the requested information now. Most of the Debtor's major assets have now been monetized. The value of assets available for distribution has proven higher than projected. It now appears that the combination of assets and cash held by

the Claimant Trust in its own name and held in the various funds, reserve accounts, and subsidiaries, will be sufficient to pay the allowed claims in full and to convert Dugaboy's Contingent Trust Interest into an Equity Trust Interest under § 5.1(c) of the Claimant Trust Agreement. Among other things, in particular:

- The Indemnity Subtrust holds liquid assets of not less than \$25 million (*see* Motion for Entry of an Order Authorizing the Creation of an Indemnity Subtrust [Dkt. 2491]; Order Granting Motion [Dkt. 2599]);
- The Debtor holds millions in reserve for professional fees;
- The Debtor recently told this Court that Acis Capital Management, L.P. holds approximately \$53 million in liquidation proceeds and loans, more than half of which will be distributed to the Debtor (*See Statement of Interested Party*, Case No. 18-30264-sgj11, Dkt. 1235 at ¶ 2).

Yet prior to Plan confirmation, the Debtor paid \$60,171,929.00 in professional fees and expenses, or approximately **\$3.1 million per month**. *See* Dkt. 3583. And since Plan confirmation, the Debtor continues to incur enormous legal fees, to the tune of millions of dollars per month.

19. Given these economic realities, a quick disposition of this Motion makes sense so that, if the Estate is solvent, the Court can determine if the Claimant Trust and the Debtor should continue to incur millions of dollars per month in professional fees, and whether the Litigation Trustee should continue to prosecute the *Kirschner v. Dondero et al.* adversary proceeding, when it appears increasingly likely that only the defendant equity holders stand to profit from that proceeding. In short, it is time to stop the extreme economic burn and to put this bankruptcy to rest. The Court should rule on whether Dugaboy and Hunter Mountain have a right to the information requested and, if so let the two parties obtain the information necessary to determine how to proceed from here.

## CONCLUSION

For all of the reasons stated in its Motion, as amended and supplemented by its Supplemental and Amended Motion for Determination of the Value of the Estate and for the reasons stated herein, Dugaboy Investment Trust requests that the Court reject the Reorganized Debtor's Objection to Motion for Determination of Value, enter an order that Dugaboy may pursue the information requested in its Motion, and grant all other relief requested in the Motion.

Dated: November 2, 2022.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Douglas S. Draper, the undersigned, hereby certify that on November 2nd, 2022, a true and correct copy of the above and foregoing was served via the Court's ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case as follows:

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*/s/Douglas S. Draper*  
Douglas S. Draper

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

In re:	*	Chapter 11
	*	
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	Case No. 19-34054 (SGJ)
	*	
Debtor	*	
	*	

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**THE DUGABOY INVESTMENT TRUST’S SUPPLEMENTAL BRIEF IN SUPPORT OF  
ITS MOTION FOR DETERMINATION OF VALUE**

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**I. INTRODUCTION**

1. Pursuant to the Court’s November 15, 2022 order [Dkt. 3625], The Dugaboy Investment Trust (“Dugaboy”) respectfully submits this Supplemental Brief on the issue of whether the relief sought in Dugaboy’s Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust [Dkt. No. 3382] (the “Motion”) requires an adversary proceeding.

2. Contrary to assertions made by Highland Capital Management, L.P (the “Debtor” or “HCMLP”), the relief sought in the Motion does not fall within any of the categories set forth in Federal Rule of Bankruptcy Procedure 7001. Rather, the Motion merely seeks basic and readily available information regarding assets and liabilities belonging to the estate to enable Dugaboy to ascertain whether there is sufficient available cash to pay creditors in full such that Dugaboy should be converted from a Contingent Claimant Trust Beneficiary to a Claimant Trust Beneficiary under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (the “Plan”) and the Claimant Trust Agreement. Thus, and as set forth more fully below, an adversary proceeding is not required, and the Court should hear and decide Dugaboy’s Motion.

## II. THE RELIEF SOUGHT IN THE MOTION DOES NOT REQUIRE AN ADVERSARY PROCEEDING

3. In its Opposition to the Motion [Dkt. 3465], the Debtor argues that the Motion is procedurally improper because Dugaboy should have filed an adversary proceeding to obtain the information it seeks. The Debtor is wrong. Rule 7001 contains an exclusive list of matters that must be brought as adversary proceedings. *See In re Live Primary, LLC*, 626 B.R. 171, 197 (Bankr. S.D.N.Y. 2021) (holding that “an adversary proceeding is not required because recharacterization of debt does not fall under one of the ten exclusive categories identified in Bankruptcy Rule 7001 that require an adversary proceeding”). If a request for relief does not fall within one of these categories, an adversary proceeding is not required.

4. The Debtor incorrectly argued in its Opposition and during the November 15, 2022 status conference that the relief sought in the Motion falls within the categories listed in Rule 7001(2) and/or 7001(7).<sup>1</sup> As explained below, the Debtor is wrong on both fronts.

### A. Bankruptcy Rule 7001(2) Is Inapplicable

5. Bankruptcy Rule 7001(2) provides that any action to “determine the validity, priority, or extent of a lien or other interest in property...” is an adversary proceeding. But the Motion is not an action to determine the “validity, priority or extent” of Dugaboy’s interest. Dugaboy’s interest in the Estate and the Claimant Trust has already been established by the Plan. Instead, Dugaboy’s Motion seeks a hearing requiring the Debtor to provide the Court and the other parties in interest (including Dugaboy) information regarding what property and assets are currently held by the Estate and the Claimant Trust. The purpose is not to establish Dugaboy’s interest in the estate, but to ascertain whether there are currently sufficient funds held by the Estate and Claimant

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<sup>1</sup> Notably, the Debtor did not argue in its briefing on the Motion that the relief sought fell within the ambit of Rule 7001(7). Instead, it raised that issue for the first time at the status conference before the Court on November 15, 2022.

Trust such that Dugaboy should be converted into Claimant Trust Beneficiary at this stage of proceedings.<sup>2</sup> Under these circumstances, the relief sought by Dugaboy is “‘not an issue of validity in any guise’ and therefore, does not require an adversary proceeding.” *In re Pearl Res. LLC*, 2022 WL 4474131, at \*8 (Bankr. S.D. Tex. Sept. 26, 2022) (citing 7 *Collier on Bankruptcy*, ¶ 7001.03 (16th ed. 2017)); *see also In re Oliver*, 483 B.R. 674, 678-79 (Bankr. N.D. Ill. 2012) (Rule 7001(2) “‘applies to efforts to establish whether a lien exists and to what it attaches, not to the separate, less complex issue of the value of the collateral supporting a lien.’”).

6. Accordingly, because Dugaboy’s Motion does not seek a determination of the validity, priority, or extent of any interest in property, Rule 7001(2) is inapplicable.

**B. Bankruptcy Rule 7001(7) Is Inapplicable**

7. Bankruptcy Rule 7001(7) is also inapplicable. Rule 7001(7) provides that “a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief” is an adversary proceeding.

8. Dugaboy’s Motion does not seek an injunction or equitable relief; it seeks *information* aimed at determining whether the Claimant Trustee should certify that Dugaboy is a Claimant Trust Beneficiary under the Plan and Claimant Trust Agreement. *See* Reply at ¶¶ 2-6. As Dugaboy explained in its briefing on the Motion, it is entitled to this relief under the terms of the Claimant Trust Agreement and Delaware trust law, which entitles contingent beneficiaries to the same type of financial information afforded to non-contingent beneficiaries. *See* Dugaboy Reply Brief, ¶¶ 4-5 [Dkt. 3603]. This type of relief is not what Rule 7001(7) contemplates.

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<sup>2</sup> To be clear, Dugaboy does not ask the Court to determine that it is a Claimant Trust Beneficiary or otherwise to convert its contingent interest into a non-contingent interest. All of that must be done according to the terms of the Plan and the Claimant Trust Agreement. Thus, there is no need for the Court to take any action in this regard.

9. Critically, the Court’s equitable power to enforce compliance with a confirmed plan—which is precisely what the Motion seeks—“is not based upon any inequitable conduct of a party that might be remedied by an injunction or some type of specific performance as contemplated by FED. R. BANKR. P. 7001(7).” *See In re Live Primary, LLC*, 626 B.R. at 190 (explaining that the court’s “equitable power” to recharacterize a proof of claim is not the kind of relief contemplated by Rule 7001(7)); *see also In re Protea Biosciences, Inc.*, 2018 WL 5734464, at \*4 (Bankr. N.D.W. Va. Oct. 30, 2018) (Rule 7007(7) did not require adversary proceeding where request was not based on remedying “inequitable conduct” through an injunction or other equitable relief).

10. Accordingly, courts routinely issue such “compliance orders” in the context of motion practice, not through adversary proceedings. *See, e.g., In re Goldblatt Bros., Inc.*, 132 B.R. 736, 741 (Bankr. N.D. Ill. 1991) (granting motion for final distribution pursuant to court’s “broad authority under §§ 105 and 1142(b) of the Bankruptcy Code to order parties to comply with reorganization plans.”); *In re Chatham Parkway Self Storage, LLC*, 507 B.R. 13, 18 (Bankr. S.D. Ga. 2014) (granting motion to compel execution of loan documents pursuant to § 1142).

11. Further, contrary to the Debtor’s assertions at the status conference held on November 15, Dugaboy’s Motion does not assert an equitable cause of action for accounting, or any other cause of action against the Debtor for that matter.<sup>3</sup> While the Motion refers to the sought-after information as an “accounting,” courts must look to the substance of a motion—not to titles

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<sup>3</sup> An accounting is a specific equitable remedy that seeks disgorgement of ill-gotten profits. *See Liu v. Sec. & Exch. Comm’n*, 140 S. Ct. 1936, 1942 (2020) (describing accounting as an “equitable remedy that deprives wrongdoers of their net profits from unlawful activity”). Dugaboy does not contend that the Debtor has obtained funds wrongfully. Further, typically an accounting is only necessary where the information sought cannot be obtained through regular discovery or where the financials are so complex that only an accounting would suffice to understand them. *See Brown v. Cooley Enters., Inc.*, 2011 WL 2200605, at \*1-2 (N.D. Tex. June 7, 2011). Again, Dugaboy claims the opposite: that the information is straightforward and should be produced in an ordinary discovery process.

or labels—to determine the nature of the relief sought. *See Cunningham v. Nationwide Sec. Solutions, Inc.*, 2018 WL 5722669, \*2 (N.D. Tex. Apr. 4, 2018); *see also Moody Nat'l Bank of Galveston v. GE Life & Annuity Assur. Co.*, 383 F.3d 249, 251 (5th Cir. 2004) (“a motion’s substance, and not its form, controls.”).

12. Here, the Motion does not seek an accounting as that term is typically understood in law but only seeks the disclosure of information that would allow Dugaboy to determine whether it is “in the money,” such that its contingent interest should be converted to a non-contingent interest, as contemplated by the Claimant Trust Agreement. *See* Motion, ¶ 33 (requesting that the Court “conduct an evidentiary hearing and require disclosure by the Reorganized Debtor and Claimant Trustee of the value of the estate and all assets held by the Claimant Trust that are available for distribution to creditors and residual equity holders.”); *see also* Reply at ¶ 19 (“The Court should rule on whether Dugaboy and Hunter Mountain have a right to the information requested and, if so, let the two parties obtain the information necessary to determine how to proceed from here.”). Again, it is Dugaboy’s contention that the Claimant Trust Agreement and Delaware law actually require disclosure of this information to Contingent Claimant Trust Beneficiaries and that any order issued by the Court requiring this disclosure would merely effectuate the terms of the confirmed Plan. Nowhere in the Motion does Dugaboy assert a cause of action for accounting or seek declaratory or any other relief sounding in equity.

### **III. CONCLUSION**

The issue to be decided by the Court is extraordinarily simple: should the Debtor produce basic information regarding its current cash position and liabilities such that parties in interest, including Dugaboy, can ascertain whether the estate is capable of paying all creditors in full and also paying some amount to residual equity holders, as contemplated by the Plan and Claimant

Trust Agreement? It makes no sense that Dugaboy should have to sue the Debtor in an adversary proceeding for that information, which is readily available, can be produced in ordinary discovery, and which the Claimant Trust Agreement actually contemplates should be provided to beneficiaries at regular intervals. Nothing in the Motion or the Bankruptcy Rules requires an adversary proceeding under these circumstances. Dugaboy respectfully requests that the Court adjudicate the Motion without delay and enter an order that Dugaboy may pursue the information requested in its Motion.

Dated: November 29, 2022.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, the undersigned, hereby certify that on November 29, 2022, a true and correct copy of the above and foregoing was served via the Court's ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case as follows:

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

**In re:** § **Case No. 19-34054-sgj11**  
§  
**Highland Capital Management, L.P.** § **Chapter 11**  
§  
**Reorganized Debtor** §  
§  
§

**BRIEF OF HUNTER MOUNTAIN AS TO THE QUESTION WHETHER THE  
“VALUATION MOTION” AND RELIEF REQUESTED THEREIN REQUIRES AN  
ADVERSARY PROCEEDING OR CONSTITUTES RELIEF AVAILABLE THROUGH  
A CONTESTED MATTER**

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Pursuant to the instructions of the Court on November 15, 2022 [Dkt. No. 3625], Hunter Mountain Investment Trust (“Hunter Mountain”) files this *Brief* (the “Brief”) regarding whether the *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Dkt. No. 3382] (the “Initial Motion”) filed by The Dugaboy Investment Trust (“Dugaboy”), as supplemented and amended by *Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Dkt. No. 3533] (the “Supplement,” and

together with the Initial Motion, the “Valuation Motion”) requires an adversary proceeding. Hunter Mountain has joined the Valuation Motion and therefore proposes this briefing, as to whether the Valuation Motion is an improper vehicle because the relief requested requires an adversary proceeding under FED. R. BANKR. P. 7001(2) (herein after, FED. R. BANKR. P., “Rule”).

1. In the Reorganized Debtor’s (“Highland” or the “Debtor,” as applicable) *Objection* [Dkt. No. 3465] (the “Highland Objection”) to the Valuation Motion, Highland asserted that the Valuation Motion was procedurally improper because pursuant to Rule 7001(2), an adversary proceeding is required. In Hunter Mountain’s *Reply* [Dkt. No. 3606], Hunter Mountain briefed why Rule 7001(2) did not apply to the Valuation Motion. *See* Dkt. No. 3606, ¶¶17-20. At the Status Conference on November 15, 2022, the Court, seemingly referencing the existing briefing on Rule 7001(2) questioned whether an adversary proceeding was required. *Transcript Status Conference, November 15, 2022* (the “Transcript”); 23:11. But in response, Highland pointed the Court to Rule 7001(7), not the previously asserted basis of Rule 7001(2). *Transcript*, 23:16-20.

2. Therefore, Hunter Mountain will address both referenced subparts of Rule 7001 and why neither requires an adversary proceeding for the relief requested in the Valuation Motion. The relief requested in the Valuation Motion, as joined by Hunter Mountain, is an order to compel limited, readily available information regarding the value of the Assets<sup>1</sup> and Obligations at this time, to determine the possibility of the Dugaboy and Hunter Mountain interests receiving distributions as Beneficiaries of the Claimant Trust. So while entitled a “Motion for Valuation,” the Valuation Motion, as joined by Hunter Mountain, is in fact a motion for information regarding the value of the Assets and Obligations to provide transparency and insight into the Equity

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<sup>1</sup> Capitalized terms not otherwise defined herein take their meaning from the *Limited Response in Support of Certain Requested Relief* [Dkt. No. 3467] (the “HMIT Response”).

Holders' Contingent Claimant Trust interests, and not a request for declaratory judgment as to the value of the Reorganized Debtor as of a certain moment in time. Also, as shown below, the Valuation Motion does not seek an accounting, as, despite the supposed arguments of Highland, an accounting is a term of art for a particular type of action, which the Valuation Motion is not.

**A. Rule 7001(2) is inapplicable to the Valuation Motion because Hunter Mountain's interest is not disputed.**

3. Rule 7001(2) provides that: an adversary proceeding is required for a proceeding to determine the validity, priority, or extent of a lien or other interest in property. FED. R. BANKR. P. 7001(2).

4. Highland characterizes the request for valuation information as a request for a determination as to the extent of Equity Holder's interests, but this is not so. The Equity Holder's interest is not disputed: they hold Contingent Claimant Trust interests.

5. Where a creditor's interest is "assertedly fixed," (i.e. the existence of a valid lien is assumed), but some underlying value is uncertain (i.e. the value of the collateral securing the lien), an adversary proceeding is **not** required by Rule 7001(2) for a valuation. *See Collier on Bankruptcy*, ¶7001.03[1] (collecting cases).

6. As Judge Rodriguez recently explained in *Pearl Resources*,

[The Bankruptcy] Code does not define "validity" or "extent," however, this Court may consider the ordinary meaning of each in determining whether an adversary proceeding is required pursuant to Bankruptcy Rule 7001(2). **...Valuation, however, is "not [an issue of] validity in any guise" and therefore, does not require an adversary proceeding.**

*In re Pearl Res. LLC*, No. 20-31585, 2022 WL 4474131, at \*8 (Bankr. S.D. Tex. Sept. 26, 2022) (emphasis added) (quoting *Collier On Bankruptcy*, ¶ 7001.03 (16th ed. 2017)).

7. Analogously here, the Equity Holder's interest is assertedly fixed: a Contingent Claimant Trust interest. Rather, the sole issue is a valuation of the underlying Assets and

Liabilities that would inform the nature of the Contingent Claimant Trust interest. This is no different than a valuation of collateral informing the nature of a creditor's lien. There is no issue of validity of the interest in any guise. Therefore, an adversary proceeding is not required under Rule 7001(2).

**B. Rule 7001(7) is inapplicable to the Valuation Motion because the relief sought is not the type contemplated by Rule 7001(7).**

8. Rule 7001(7) provides that: an adversary proceeding is required to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief. FED. R. BANKR. P. 7001(d).

9. "Other equitable relief" as used in Rule 7001(7) includes relief other than injunctions traditionally granted only by courts of equity. *See In re Live Primary, LLC*, 626 B.R. 171, 190 (Bankr. S.D.N.Y. 2021) (citing *Collier on Bankruptcy*, ¶7001.08).

10. Hunter Mountain cites the Court to its equitable power pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code to issue "compliance orders," and specifically cases in which courts issued such orders to compel distributions on claims as required by the plan. *See Collier on Bankruptcy*, ¶ 1142.03[1] (citing *In re WorldCom, Inc.*, No. 02-13533(AJG), 2009 WL 2959457 (Bankr. S.D.N.Y. May 19, 2009); *In re Goldblatt Bros., Inc.*, 132 B.R. 736 (Bankr. N.D. Ill. 1991)).

11. But a bankruptcy court's equitable power to issue compliance orders "is not based upon any inequitable conduct of a party that might be remedied by an injunction or some type of specific performance as contemplated by FED. R. BANKR. P. 7001(7)." *See Live Primary*, 626 at 190; *In re Protea Biosciences, Inc.*, No. 17-BK-1200, 2018 WL 5734464, at \*4, n. (Bankr. N.D. W. Va. Oct. 30, 2018) (finding that a bankruptcy court's equitable power to recharacterize a proof of claim as an interest in the debtor "is not based upon any inequitable conduct of a party that might

be remedied by an injunction or some type of specific performance as contemplated by Fed. R. Bankr. P. 7001(7).”).

12. In the cases in which bankruptcy courts issue such compliance orders, the orders are precipitated by a motion and contested matter, not an adversary proceeding. *See e.g. In re Goldblatt Bros., Inc.*, 132 B.R. 736 (Bankr. N.D. Ill. 1991) (movant brought motion for final distribution); *In re Chatham Parkway Self Storage, LLC*, 507 B.R. 13, 18 (Bankr. S.D. Ga. 2014) (movant filed a motion to compel execution of loan documents); *In re Riverside Nursing Home*, 137 B.R. 134, 138 (Bankr. S.D.N.Y. 1992) (movant filed a motion to appoint a receiver).

13. These motions were made pursuant to the Court’s equitable powers to enter orders to effectuate a confirmed plan. None required an adversary proceeding because this type of relief is not the type contemplated by Rule 7001(7) to remedy some inequitable conduct of a party.

14. To find otherwise would read out the exception to Rule 7001(7) which provides that an adversary proceeding is not required when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief. FED. R. BANKR. P. 7001(d).

15. Highland interprets this provision to apply only to explicit relief provided for by the Plan, but case law permitting compliance orders instructs otherwise.

16. For instance, courts enter compliance orders to effectuate distributions as provided for in the plan in ways plainly not provided in the confirmed plan. *See Goldblatt Bros.*, 132 B.R. at 741 (ordering the appointment of firm to find missing creditors); *In re Jorgensen*, 66 B.R. 104, 108 (B.A.P. 9th Cir. 1986) (ordering the appointment of different marketing agent than provided for in the plan); *Matter of Coral Air, Inc.*, 21 V.I. 7, 14 (D.V.I. 1984) (ordering numerous changes in management of the debtor entity including implementing reporting requirements).

17. Highland also asserts that the Valuation Motion is an action seeking an accounting, and therefore under Rule 7001(7) requires an adversary proceeding because an action for an accounting is one for equitable relief under that subsection. Transcript, 19:5-7. An action that in fact seeks an accounting has been held to require an adversary proceeding. *Collier on Bankruptcy*, ¶7001.08 (citing to *In re Mitchell*, 44 B.R. 485, 490 (Bankr. N.D. Ala. 1984) (finding that a proceeding to obtain an accounting is generally an equitable proceeding).

18. However, an accounting is a specific equitable remedy that seeks disgorgement of ill-gotten profits. *SCA Hygiene Prod. Aktiebolag v. First Quality Baby Prods.*, 137 S.Ct. 954, 964, 197 L.Ed.2d 292 (2017); *Liu v. Sec. & Exch. Comm'n*, 207 L. Ed. 2d 401, 140 S. Ct. 1936, 1942 (2020) (describing accounting as where equity courts routinely depriving wrongdoers of their net profits from unlawful activity). The Valuation Motion in no way seeks an accounting, only information concerning the value of cash on hand and cash held at subsidiaries (including cash held in reserve, whether or not in specific accounts), claims yet paid, the amount of the exit facility balance, and the post-petition claims to be paid, the rate of post-petition “burn” (which would be limited to information not provided in quarterly public reporting).

19. The point of the Valuation Motion is to help determine whether the interests of the Equity Holders could be or should be entitled to the status as beneficiaries of the Claimant Trust. What this Court has been told is that the amount of funds over and above obligations is irrelevant, because the obligation to indemnify precludes any discussion of whether there could be sufficient funds on hand to account for both indemnification and equity. The relief sought by the Valuation

Motion would not resolve the question, but the existence of the question means the relief requested—information—is not an accounting.<sup>2</sup>

20. As Hunter Mountain has briefed, the Valuation Motion is proper under sections 105(a) and 1142(b) of the Bankruptcy Code to effectuate the terms of the Plan. Such motions are plainly not of the type governed by Rule 7001(7), rather such motions are governed by Rule 3020(d) and 9014(a). As the bankruptcy court in *WorldCom* explained:

Section 1142(b) empowers the bankruptcy court to enforce the unperformed terms of a confirmed plan. The clear intent of Section 1142(b) of the Bankruptcy Code is to assure that the terms and provisions of a confirmed chapter 11 plan are carried out until the plan is completed and the final decree is entered closing the case. Bankruptcy Rule 3020(d), also provides, “[n]otwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.” The Court has the power under § 1142 to order the Reorganized Debtors to carry out the Plan and its provisions.... If the Plan envisioned that the Reorganized Debtors would be responsible for satisfying certain claims then the Court has the power to enforce compliance with the Plan.

*In re WorldCom, Inc.*, No. 02-13533(AJG), 2009 WL 2959457, at \*7 (Bankr. S.D.N.Y. May 19, 2009) (internal citations omitted).

21. Because the Valuation Motion seeks an order to effectuate the terms of the Plan pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code, Rule 7001(7) does not apply.

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<sup>2</sup> The Valuation Motion states that it seeks a “determination by this Court of the current value of the estate and an accounting of the assets currently held the Claimant Trust...” See Valuation Motion, ¶1. The use of term accounting in this context does not mean any action for an equitable accounting but rather access to information found in books and records. These are distinct concepts, though sometimes confused. See Peter Mahler, *Equitable Accounting vs. Access to Books and Records: Don’t Confuse Them*, J.D. SUPRA (December 17, 2018) available at: <https://www.jdsupra.com/legalnews/equitable-accounting-vs-access-to-books-30876/>; 1A C.J.S. ACCOUNTING § 6 (“an accounting sounding in equity is essentially a legal action or equitable remedy, designed to compel a defendant to account for and pay over money owed to the plaintiff but held by the defendant.”); 83 Causes of Action 2d 455 (Originally published in 2018) (an “equitable accounting is a distinct remedial cause of action, rooted in equity, which seeks an adjustment of the accounts of the parties and a rendering of a judgment for the balance ascertained to be due.”).

## CONCLUSION

For the reasons set forth herein, neither provisions of Rule 7001 mentioned by Highland applies to the Motion. An adversary proceeding is not required and the Court can adjudicate the Valuation Motion pursuant to Rules 9014 and 3020(d).

**Respectfully submitted:**

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**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a true and correct copy of the above and foregoing document and all attachments thereto were sent via electronic mail via the Court's ECF system to all parties authorized to receive electronic notice in this case on this November 29, 2022.

*/s/ Louis M. Phillips*

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter  
Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

**Volume 4**

**APPELLANT RECORD**



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

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

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

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

*000001*

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

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj 11.

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 4**

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

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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 5**

DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

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

In re:  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>  
  
Reorganized Debtor.

Chapter 11  
Case No. 19-34054-sgj11

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S BRIEF ESTABLISHING THE NEED  
FOR AN ADVERSARY PROCEEDING  
TO OBTAIN THE RELIEF SOUGHT IN VALUATION MOTION<sup>2</sup>**

Highland Capital Management, L.P., the reorganized debtor in this Chapter 11 case (“**Highland**”), respectfully submits the following arguments establishing that the relief sought by

<sup>1</sup> Highland’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

<sup>2</sup> This brief responds to the Court’s request for further briefing regarding the “sole issue [of] whether the relief sought in the motion for a valuation requires an adversary proceeding.” Hearing Transcript Nov. 15, 2022, 29:9–10.

The Dugaboy Investment Trust (“**Dugaboy**”) in the *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382] (the “**Initial Mtn.**”) and the *Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3533] (the “**Supp. Mtn.**” and, together with the Initial Mtn., the “**Valuation Motion**”) and supported by Hunter Mountain Investment Trust (“**HMIT**”) must be sought, if at all, by filing an adversary proceeding under Bankruptcy Rule 7001.

### **Introduction**

1. Dugaboy is clear about what it seeks in the Valuation Motion: an accounting of the assets held in, and the liabilities of, the Highland Claimant Trust (the “**Claimant Trust**”) on a consolidated basis (*i.e.*, including the assets of Reorganized Highland, the Highland Litigation SubTrust, and the Indemnity SubTrust) so that Dugaboy may ascertain what, if any, interest it may arguably have in the Claimant Trust. But the Valuation Motion is procedurally improper because the relief sought may only be obtained in a proceeding for: (1) equitable relief; (2) declaratory relief; or (3) a determination of the extent of an interest in property.

2. Each one of these types of proceedings must be commenced by the filing of an adversary proceeding under Bankruptcy Rule 7001. A “proceeding to obtain ... equitable relief” requires an adversary proceeding under Bankruptcy Rule 7001(7). A “proceeding to obtain a declaratory judgment” requires an adversary proceeding under Bankruptcy Rule 7001(9). And a “proceeding to determine the ... extent of ... [an] interest in property” requires an adversary proceeding under Bankruptcy Rule 7001(2). When Bankruptcy Rule 7001 says “The following are adversary proceedings,” a proceeding appearing in the rule’s list of ten proceeding types *must* be brought as an adversary proceeding.<sup>3</sup>

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<sup>3</sup> See, e.g., *Haber Oil Co. v. Swinehart (In re Haber Oil Co.)*, 12 F.3d 426, 437–40 (5th Cir. 1994).

3. If this Court agrees that the relief sought in the Valuation Motion falls within one or more of these three categories, the Court should require Dugaboy to seek that relief by filing and prosecuting an adversary proceeding under Part VII of the Bankruptcy Rules.

### **The Valuation Motion Seeks Equitable Relief**

4. Dugaboy acknowledges that the Valuation Motion, at its core, is about obtaining information pertaining to the assets and liabilities of the Claimant Trust—an **accounting**. “By this Motion, ... [Dugaboy] respectfully seeks ... an **accounting** of the assets currently held [*sic*] the Claimant Trust ....”<sup>4</sup> Dugaboy further characterizes the relief it seeks as an invocation of alleged “**accounting rights** of contingent [trust] beneficiaries ....”<sup>5</sup>

5. At the initial status conference in this matter, counsel for both Dugaboy and HMIT stated repeatedly that they want an accounting (while carefully avoiding using that magic word), referring to what they want as “information” about the assets and liabilities of the Claimant Trust:

- MR. DRAPER: ... The first issue is ... am I entitled to the information that I seek? ... If in fact I’m entitled to the information and I’m entitled to the hearing, then we should go forward ... I’m entitled to the information. And ... I believe we’re entitled to the information ...<sup>6</sup>
- MR. DRAPER: ... This is merely seeking information ... It’s seeking information as to the value of an estate ... We’re really asking to find out what the—what the estate is entitled—has and whether I’m entitled to a report.<sup>7</sup>
- MR. PHILLIPS: ... If, if we could get information ... We just don’t know what money is there ... as a practical matter, if we can get information about the assets, not only at Highland but at the subsidiaries, what’s left to be done, and we could see what’s reserved, then maybe everybody could stop, everybody could stop and take a look ... if we knew what the assets were or we knew what the claims were, then maybe everybody could take a step back and take a look at it.<sup>8</sup>

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<sup>4</sup> Supp. Mtn. at 1 (emphasis added).

<sup>5</sup> *Id.* at 15 (emphasis added).

<sup>6</sup> Hearing Transcript Nov. 15, 2022, at 6:5–8:17.

<sup>7</sup> *Id.* at 12:2–22.

<sup>8</sup> *Id.* at 15:24–17:18.

6. Whether it's called "information about the assets," or "information about the reserves and claims," or "information about what the estate has," or "what money is there," it remains clear that what Dugaboy and HMIT seek is an **accounting** of the Claimant Trust. An accounting is an equitable remedy that must be sought by adversary proceeding under Bankruptcy Rule 7001(7),<sup>9</sup> which provides that an adversary proceeding includes "a proceeding to obtain an injunction or other equitable relief, except when a ... plan provides for the relief."<sup>10</sup> For reasons extensively discussed in Highland's *Reply in Further Opposition to Valuation Motion* [Docket No. 3614], nothing in the confirmed Plan or in the Claimant Trust Agreement entitles contingent beneficiaries of the Claimant Trust to *any* information regarding trust assets, much less an accounting of the sort Dugaboy now seeks. Thus, Dugaboy seeks an equitable remedy from this Court—an accounting. That remedy must be sought by adversary proceeding under Bankruptcy Rule 7001(7). Seeking an accounting by motion as Dugaboy has done in the Valuation Motion, is improper.

7. That Dugaboy and HMIT are both seeking equitable relief is highlighted by their reliance on Bankruptcy Code § 105(a)—equitable relief—to support their request for an

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<sup>9</sup> See, e.g., *Williams v. Wells Fargo Bank, N.A.*, 560 F. App'x 233, 243 (5th Cir. 2014) ("A suit for accounting is generally founded in equity"); *Animale Group v. Sunny's Perfume, Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007) ("Plaintiffs seek an accounting ... which is 'subject to the principles of equity,'" citing *Maltina Corp. V. Cawy Bottling Co.*, 613 F.2d 582 (5th Cir. 1980)); *In re Higgins*, 2009 Bankr. LEXIS 3672 at \*2 (Bankr. N.D. Ind. Nov. 19, 2009) ("Determination of this amount ... requires an adversary proceeding for an accounting pursuant to Fed.R.Bankr.P. 7001(7)(9)"); *In re Mitchell*, 44 B.R. 485, 490 (Bankr. N.D. Ala. 1984) ("A proceeding to obtain an accounting is generally an equitable proceeding"); *In re Turner*, 2010 Bankr LEXIS 300 at \*5 (Bankr. N.D. Ind. Feb. 9, 2010) ("the debtors' request falls within the provisions of Fed.R.Bankr.P. 7001(7)—'a proceeding to obtain ... other equitable relief', i.e., an accounting"); *Campbell v. Cathcart (In re Derivium Capital, LLC)*, 380 B.R. 429, 443 (Bankr. D.S.C. 2006) ("These facts, if true, would allow the Court in its equitable jurisdiction to order Veristeel to provide an accounting of all assets of Debtor transferred," citing Bankruptcy Rule 7001(7)); 10 *Collier on Bankruptcy* ¶ 7001.08 (16th ed. 2022) ("Other equitable relief" as used in Rule 7001(7) should include relief other than injunctions traditionally granted only by courts of equity. Accountings ... immediately come to mind ....").

<sup>10</sup> Highland does not concede anything in respect of whether Dugaboy is entitled to the accounting it seeks. But at this point in these proceedings, the Court need not determine Dugaboy's entitlement to an accounting as a substantive matter and need only determine that the information Dugaboy seeks—which amounts to an accounting—must be sought through an adversary proceeding.

accounting.<sup>11</sup> The Supreme Court and the Fifth Circuit have long recognized that bankruptcy litigants such as Dugaboy misinterpret Bankruptcy Code § 105(a) as a broad grant of authority allowing bankruptcy courts to “do equity.”<sup>12</sup> *Collier* explains the limits on bankruptcy courts’ equitable powers: “The *equitable origins* of the bankruptcy power suggest substantial leeway to tailor solutions to meet the diverse problems facing bankruptcy courts. Section 105 gives the bankruptcy court the power to *fill in gaps and further the statutory mandates of Congress* in an efficient manner.”<sup>13</sup>

8. Insofar as the Valuation Motion seeks relief that, Dugaboy and HMIT argue, may only be granted under Bankruptcy Code § 105(a), that relief is equitable relief. Bankruptcy Rule 7001(7) requires equitable relief to be sought only through an adversary proceeding.

#### **The Valuation Motion Seeks a Determination of the Extent of Dugaboy’s Contingent Interest in Property**

9. Dugaboy argues that the Plan establishes an interest in property by granting Dugaboy a contingent beneficial interest in the Claimant Trust. True enough, but Dugaboy ignores a critical word—in this context, *the* critical word—in Bankruptcy Rule 7001(2): **extent**. The Valuation Motion is about nothing if not an accounting of Claimant Trust assets and superior beneficial interests in those assets so that Dugaboy may assess the *extent* of its interest in the Claimant Trust (although neither Dugaboy nor HMIT will have any interest until their respective contingent interests vest). That Dugaboy has some sort of unvested interest in the Claimant Trust

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<sup>11</sup> *Reply in Support*, Docket No. 3606, at 3. “MR. DRAPER: ... It’s really a 105 argument, Your Honor.” Hearing Transcript Nov. 15, 2022, at 11:13–14. “MR. PHILLIPS: ... We think that the Court retained authority under 1142(b) and 105 to implement—determine, classify equity interests ...” Hearing Transcript Nov. 15, 2022, at 13:6–8.

<sup>12</sup> “We have long held that ‘whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of’ the Bankruptcy Code.” *Law v. Siegel*, 571 U.S. 415, 421 (2014) (referring to Bankruptcy Code § 105(a) and quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). See also *United States v. Sutton*, 785 F.2d 1305, 1308 (5th Cir. 1986) (“[Section 105] does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity”).

<sup>13</sup> 2 *Collier on Bankruptcy* ¶ 105.01 (16th ed. 2022) (emphasis added).

(and, therefore, its property) is not in dispute—Highland and Dugaboy agree that the Plan grants Dugaboy a contingent, as-yet unvested interest in the Claimant Trust. That undisputed fact certainly cannot be the reason for bringing the Valuation Motion. It is the **extent of that interest** that is the subject of the Valuation Motion. Assessing the extent of Dugaboy’s contingent interest in Claimant Trust property is the purpose of the Valuation Motion, Dugaboy’s request for an evidentiary hearing, and Dugaboy’s demand for an accounting (which is itself, as noted above, a demand for equitable relief requiring an adversary proceeding under Bankruptcy Rule 7001(7)).

10. HMIT’s counsel didn’t equivocate about this when he argued at the status conference that, “We think that the Court retained authority under 1142(b) and 105 to ... determine, classify equity interests ...”<sup>14</sup> The Plan already “classifies” equity interests, so what HMIT seeks here is a “determination” of the *extent* of the equity interest. That oral argument is consistent with what HMIT said in its reply in support of the Valuation Motion: “In the Plan, the Bankruptcy Court expressly retained jurisdiction, citing sections 105 and 1142 of the Bankruptcy Code, to determine or classify any Equity Interest ....”<sup>15</sup> “Determining” an equity interest—particularly in the context in which the Plan already classifies equity interests and establishes that Dugaboy and HMIT possess an unvested, contingent equity interest in Highland—can only mean assessing the *extent* of that equity interest, the *extent* of Dugaboy’s and HMIT’s entitlement to a distribution from the Claimant Trust.

11. A proceeding to “determine” an equity interest, to ascertain the value of Claimant Trust assets via an accounting, is an indispensable part of mathematically assessing the *extent of Dugaboy’s interest in property*. Dugaboy concedes as much:

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<sup>14</sup> Hearing Transcript Nov. 15, 2022 at 13:6.

<sup>15</sup> *Reply in Support*, Docket No. 3606, at 3 (emphasis in original).

- An evidentiary “hearing would benefit not only Dugaboy in **ascertaining the value of its current interest in the estate** ...”<sup>16</sup>
- “the nature of Dugaboy’s interest in the estate ... cannot now be classified as remote.”<sup>17</sup>
- “Dugaboy’s interest in the estate is very much real and realizable ....”<sup>18</sup>
- “MR. DRAPER: ... “there is no recourse for me to attack, or just not even attack, to have the standing that I have on an appellate issue raised at a various point in time ... the February 2021 matters were based on a projection .... I should have the ability to have my standing determined at that point in time, not based upon the set of facts that existed at the confirmation hearing.”<sup>19</sup>

12. A request to determine the extent of Dugaboy’s potential future interest in the Claimant Trust must be brought as an adversary proceeding under Bankruptcy Rule 7001(2): “a proceeding to determine the ... extent of [an] ... interest in property ...”<sup>20</sup> Whether the proceeding seeks to determine the extent of a movant’s ownership in stock or to determine the extent of an entity’s limited partnership interest or the extent of a contingent beneficial interest in a creditor trust created by a confirmed Chapter 11 plan, it is a proceeding required to be commenced by the filing of an adversary complaint under Bankruptcy Rule 7001(2).

13. This is why HMIT’s reliance on *Pearl Resources* in its *Reply in Support* is misplaced.<sup>21</sup> The court there, *in an adversary proceeding to invalidate an asserted lien*, was

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<sup>16</sup> Supp. Mtn. at 17. Of course, Dugaboy misspeaks when it refers to “its current interest in the estate.” There is no estate insofar as the Plan became effective well over a year ago and vested all estate assets in the Claimant Trust. Surely, Dugaboy means “its current interest in the Claimant Trust.”

<sup>17</sup> Supp. Mtn. at 2.

<sup>18</sup> Supp. Mtn. at 3.

<sup>19</sup> Hearing Transcript Nov. 15, 2022, at 8:23–9:8. Stated simply, Dugaboy wants to assess the **extent** of its interest in property by getting an accounting that may demonstrate that the February 2021 projections are now outdated.

<sup>20</sup> *See, e.g., In re Cadiz Properties*, 278 B.R. 744, 746 (Bankr. N.D. Tex. 2002), in which a dispute arose between a movant and a debtor regarding the extent to which the movant owned stock in the debtor; this Court (Judge Felsenthal) held that the “determination of the ownership of the stock must be resolved in an adversary proceeding,” citing Bankruptcy Rules 7001(2) and (9). *See also In re Corky Foods Corp.*, 85 B.R. 903, 904 (Bankr. S.D. Fla. 1988) (movant sought court’s determination of a specific value of a limited partnership interest; “In denying this motion, I do not pretermitt [fail to mention] movant’s contention that the debtor’s partnership interest has a present negative value.... [T]his issue may only be presented by an adversary complaint. B.R. 7001(2) or (9)”).

<sup>21</sup> *Reply in Support*, Docket No. 3606, at 7.

concerned with the **validity** of a lien for purposes of Bankruptcy Code § 502 and the allowance of a proof of claim relating to a purported lien on mineral property: “The **validity** of Maverick’s Lien Claim under Chapter 56 of the Texas Property Code is at the heart of this proceeding.”<sup>22</sup> That court was assessing the validity of a creditor’s claim against the estate under § 502 that had been made the subject of an objection because it had not been asserted as an adversary proceeding. In overruling the objection on that basis, the court—in the context of a pre-confirmation claim objection under Bankruptcy Code § 502 where “valuation” was incidental to whether the creditor had a claim at all—was addressing whether a proof of claim had to be brought as an adversary proceeding. (In this way, *Pearl Resources* stands for the unremarkable proposition that a would-be secured creditor does not have to commence an adversary proceeding to seek allowance of its proof of claim under Bankruptcy Code § 502.) That court was *not* addressing an effort to assess the **extent** of an equity holder’s contingent interest in property (already established and allowed under a confirmed and effective Plan and an effective Claimant Trust Agreement) nearly two years post-confirmation. Dugaboy seeks something entirely different from what the court in *Pearl Resources* was addressing (in the context of pre-confirmation claim allowance)—an accounting of a post-effective date Claimant Trust’s assets and liabilities to enable Dugaboy to measure the **extent** of its contingent interest in the Claimant Trust.

14. All the relief Dugaboy seeks in the Valuation Motion is intended to allow Dugaboy to ascertain the *extent* of its interest in the Claimant Trust (although Dugaboy will never have an interest in the Claimant Trust until its contingent interest has vested). Thus, all the relief Dugaboy seeks in the Valuation Motion must be sought in an adversary proceeding under Bankruptcy Rule 7001(2).

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<sup>22</sup> *Pearl Res. LLC v. Allied OFS LLC (In re Pearl Res. LLC)*, 2022 Bankr. LEXIS 2675 at \*22 (Bankr. S.D. Tex. Sept. 26, 2022) (emphasis added).

### The Valuation Motion Seeks a Declaratory Judgment

15. The Valuation Motion does not only seek information—an accounting of the assets and liabilities of the Claimant Trust on a consolidated basis. The Valuation Motion goes further, seeking a determination from this Court that the value of the Claimant Trust’s assets exceeds the Claimant Trust’s liabilities and that, therefore, Dugaboy’s tiny equity interest in Highland (as a member of Class 10 under the Plan) is “in the money,” and entitled to a vested beneficial interest in the Claimant Trust and a distribution from the Claimant Trust on account of its equity interests (after all creditor beneficiaries are paid in full). Leaving aside Dugaboy’s mischaracterization of its interest in the Claimant Trust, Dugaboy itself characterizes the relief it seeks in the Valuation Motion as declaratory relief: “Accordingly, this Motion seeks an evidentiary hearing so that the Court may determine the current amount of cash and other assets currently held by the Claimant Trust for distribution to Claimant Trust Beneficiaries ....”<sup>23</sup>

16. Dugaboy is asking this Court for an accounting so that the Court can *declare* Dugaboy to be “in the money.” Dugaboy is asking this Court to *declare* that its contingent, inchoate, and unvested interest in the Claimant Trust somehow has positive value today—to *declare* the extent of its interest in property. Dugaboy is asking this Court to *declare* that it possesses “person aggrieved” appellate standing under applicable Fifth Circuit precedent because its contingent equity interests may someday have positive value and that, therefore, the outcome of its many appeals to the District Court and the Fifth Circuit Court of Appeals will affect Dugaboy pecuniarily.<sup>24</sup> Dugaboy is asking this Court to *declare* that it is unreasonable for the Litigation

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<sup>23</sup> Supp. Mtn. at 4–5.

<sup>24</sup> “Dugaboy’s Appellate Rights Are Compromised ... Dugaboy has argued [to appellate courts] that *Coho*’s iteration of standing [that an appellant lacks appellate standing because it is not a “person aggrieved” and not pecuniarily affected by the outcome of the appeal] cannot be correct because the value of estate assets fluctuates during and after bankruptcy, such that the value of interests held by creditors and residual equity holders likewise fluctuates over time.” Initial Mtn. at 13.

SubTrust to pursue causes of action against Dugaboy and HMIT because only Dugaboy and HMIT “stand to profit” from those proceedings.<sup>25</sup>

17. These requests all constitute a multi-faceted prayer for declaratory relief. By filing the Valuation Motion, Dugaboy has asked this Court for a declaratory judgment, something that Bankruptcy Rule 7001(9) requires to be sought only through an adversary proceeding: “The following are adversary proceedings: ... (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing [types of relief] ....” Dugaboy seeks equitable relief that must be sought, if at all, by an adversary proceeding under Bankruptcy Rule 7001(7). It also seeks a determination of the extent of its interest in Claimant Trust assets, which must be sought, if at all, by an adversary proceeding under Bankruptcy Rule 7001(2). But Dugaboy also seeks declaratory relief relating to the equitable relief it seeks and the requested determination of the extent of its interest in Claimant Trust property.<sup>26</sup> Seeking declaratory relief relating to each of these matters—any of these matters—requires Dugaboy to file and prosecute an adversary proceeding to obtain that declaratory relief under Bankruptcy Rule 7001(9), a third basis for this Court to compel Dugaboy to commence an adversary proceeding if it wants the relief it seeks in the Valuation Motion.

### Conclusion

18. Irrespective of whether the Court deems the relief sought in the Valuation Motion as equitable relief or declaratory relief or relief to determine the extent of Dugaboy’s interest in property, or some combination of two or all three of those categories, that relief must be sought

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<sup>25</sup> [Dugaboy’s] Reply in Support of Its Motion for Determination of Value [Docket No. 3603] at 9.

<sup>26</sup> See, e.g., *In re Eastman Kodak Co.*, 2012 Bankr. LEXIS 2746 at \*6 (Bankr. S.D.N.Y. June 15, 2012) (a party’s request for a declaratory judgment pertaining to a determination of the extent of an interest in property requires an adversary proceeding); *In re Ortiz*, 2012 Bankr. LEXIS 2148 at \*6–\*8 (Bankr. S.D. Tex. May 15, 2012) (creditor sought a “declaratory judgment ‘determining that [his] claim cannot be barred for lack of notice ... and deeming such Proof of Claim timely filed,’” but court did “not reach [his] request for a declaratory judgment, for the reason that the seeking of a declaratory judgment requires the filing of an adversary proceeding”).

within the confines of an adversary proceeding. Dugaboy (and, ostensibly, HMIT) must be required to commence an adversary proceeding.

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Dated: November 29, 2022

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CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 6, 2022

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER DENYING MOTION [DE # 3382] AND SUPPLEMENTAL MOTION [DE  
# 3533] OF DUGABOY INVESTMENT TRUST DUE TO PROCEDURAL  
DEFICIENCY: ADVERSARY PROCEEDING IS REQUIRED**

**I. Introduction: Context in Which Underlying Motion and Supplemental  
Motion Arise.**

By way of background, the above-referenced bankruptcy case of Highland Capital Management, L.P. (“Highland”) is in a post-confirmation stage. Highland’s Fifth Amended Plan of Reorganization, as Amended (the “Plan”), was confirmed on February 22, 2021 and went effective on August 11, 2021 (the “Effective Date”). Highland will be referred to sometimes as the “Reorganized Debtor,” when discussing Highland during the post-Effective Date time period.

On the Effective Date of the Plan, a “Claimant Trust” was created pursuant thereto, and is governed by that certain Claimant Trust Agreement, effective as of August 11, 2021 (the “CTA”). The CTA was expressly incorporated into and is a part of the Plan. Highland’s assets were either transferred to the Claimant Trust or remained at Highland for monetization. All prepetition equity interests in Highland were canceled pursuant to the Plan. New limited partnership interests in the Reorganized Debtor were issued to the Claimant Trust. Beneficial interests in the Claimant Trust were created in favor of Highland’s prepetition general unsecured creditors in Class 8 (General Unsecured Claims) and Class 9 (Subordinated Claims). Former equity interests in Highland are treated under the Plan and CTA as having “Contingent Trust Interests” in the Claimant Trust, and such interests will vest into “Claimant Trust Beneficiaries” upon certification by the Claimant Trustee that holders of Allowed Claims against Highland have been paid indefeasibly in full, plus post-petition interest at the federal judgment rate.

## **II. Pending Motion and Supplemental Motion.**

On June 30, 2022, the Dugaboy Investment Trust (“Dugaboy”) filed a “*Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*” [DE # 3382] (the “Value Motion”). Notably, prior to the Effective Date of the Plan, Dugaboy owned 0.1866% of Highland’s total equity. By its Value Motion, Dugaboy sought “a determination by this Court of the current value of the estate and an accounting of the assets currently held the [sic] Claimant Trust and available for distribution to creditors.”

Dugaboy thereafter, on September 21, 2022, filed a “*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*” [DE# 3533] (the “Supp. Value Motion” and, together with the Value Motion, the “Dugaboy Value Motions”). The Supp. Value Motion further stated that “the Court should conduct an evidentiary hearing and

require disclosure by the Reorganized Debtor and Claimant Trustee of the value of the estate and all assets held by Claimant Trust that are available for distribution to creditors and residual equity holders.” The Dugaboy Value Motions collectively express a belief that the Claimant Trust may have sufficient assets with which to pay creditors in full, with interest. The prayer for relief in the Supp. Value Motion requests “an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now . . . .”

The Dugaboy Value Motions were supported by Hunter Mountain Investment Trust (“HMIT”) in a *“Limited Response in Support of Certain Requested Relief”* [DE # 3467] filed on August 24, 2022 (“HMIT Response”). Prior to the Effective Date, HMIT owned 99.5% of Highland’s equity.

The Dugaboy Value Motions were opposed by the Reorganized Debtor in a *“Reorganized Debtor’s Objection to Motion for Determination of Value”* [DE # 3465] filed August 24, 2022 (“Reorganized Debtor’s Objection”).

These various pleadings were pending for a while before the parties requested court time. At the parties’ request, the court held a non-evidentiary status conference on these pleadings on November 15, 2022.

At the status conference, the court expressed concerns whether the Dugaboy Value Motions required the procedural mechanism (i.e., the due process and protections) of an adversary proceeding, pursuant to Fed. R. Bankr. P. 7001. The court gave the parties until November 29,

2022, to submit briefs solely dealing with the issue of whether an adversary proceeding is required for the relief sought in the Dugaboy Value Motions. The court indicated it would rule on this procedural issue based on these subsequent briefs. Dugaboy, HMIT, and the Reorganized Debtor each filed briefs on November 29, 2022 [DE ## 3637, 3638, and 3639 respectively].

### **III. Ruling.**

Based on the court's review of the briefs and deliberations, the court determines that an adversary proceeding is necessary with regard to the relief sought in the Dugaboy Value Motions.

First, Fed. R. Bankr. P. 7001(2) states that a "proceeding to determine the validity, priority, or extent of a lien or other interest in property" should be brought as an adversary. The Dugaboy Value Motions seek for the court to determine the extent of Dugaboy's interest in the property in the Creditor's Trust. Specifically, is Dugaboy "in the money" or not? Will its status as a holder of a "Contingent Trust Interest" soon spring into the status of a "Claimant Trust Beneficiary" or not? Same, obviously, for HMIT.

Additionally, Fed. R. Bankr. P. 7001(7) states that the following should be brought as an adversary proceeding: a "proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12 or chapter 13 plan provides for the relief." The Dugaboy Value Motions seek equitable relief that does not appear to be provided for in the confirmed chapter 11 plan. Specifically, the essence of the Dugaboy Value Motions is a request for an accounting (Dugaboy sought "a determination by this Court of the current value of the estate and an accounting of the assets currently held the [sic] Claimant Trust and available for distribution to creditors"). Dugaboy and HMIT have not pointed to any provision of the CTA that establishes a right to an accounting. The court notes anecdotally that section 3.12(a) of the CTA states that "Except as

otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.” But to be clear, it is not as though the Claimant Trustee is operating “under the radar.” Section 3.12(b) of the CTA states that:

“The Claimant Trustee shall provide quarterly reporting to the Oversight Board<sup>1</sup> and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor’s performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity’s Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary’s agreement to maintain confidentiality with respect to any non-public information.”

It would appear that Dugaboy and HMIT may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA.<sup>2</sup>

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<sup>1</sup>“Oversight Board” was defined in the CTA as “the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.”

<sup>2</sup> The court notes that Dugaboy seems to argue that it has been deprived of information throughout the Highland bankruptcy case, and that there was a lack of overall transparency. This rings hollow since: (a) this bankruptcy case had a very aggressive, proactive, and sophisticated Official Unsecured Creditors Committee (“UCC”) with extensive monitoring rights to information throughout the case; (b) a Board of Independent Directors was appointed post-petition due to concerns about having management free of conflicts—which Board (one of whose members was a retired bankruptcy judge) operated quite transparently; (c) there has been an active, vigilant United States Trustee during the case; and (d) Dugaboy is the family trust of James Dondero, a founder and the former CEO of Highland who had reason to be extremely familiar with everything associated with Highland. While a late-in-the-bankruptcy-case argument was lodged by Dugaboy that Rule 2015.3 statements had not been filed by Highland and that an Examiner should be appointed to look into Highland’s non-debtor subsidiary value and activity because of this, such argument was made just prior to Plan confirmation and seemed more like a litigation tactic than an honest desire for information.

Finally, Rule 7001(9) states that the following should be brought as an adversary proceeding: a “proceeding to obtain declaratory judgment relating to any of the foregoing.” While Dugaboy seems to urge that it is, at bottom, simply seeking *information* and not a determination or declaration of any kind, this contradicted by both the title of the Dugaboy Value Motions (both containing the word “Determination” therein) the prayers therein, seeking that the court find “that Dugaboy has standing in these bankruptcy proceedings” and for an order “determine[ing] the current value of those assets (i.e., assets of the Reorganized Debtor and Claimant Trust”). These are clearly requests for declaratory judgment as to value of assets, the extent of Dugaboy’s and HMIT’s interests in assets, and ultimately a declaration as to Dugaboy’s standing.

Accordingly, the Dugaboy Valuation Motions (and HMIT’s joinder therein) will not be considered at this juncture and are hereby **DENIED** for procedural deficiency. This is without prejudice to the filing of an adversary proceeding.

**IT IS SO ORDERED.**

**### END OF ORDER ###**

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Moreover, the Rule 2015.3 filing requirement can be modified by a court for cause—something that would be reasonable in a case such as this where there was extensive oversight by a UCC and Independent Board.



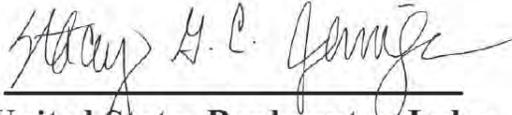
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2023

  
United States Bankruptcy Judge

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

IN RE: §  
§  
HIGHLAND CAPITAL MANAGEMENT, L.P., § Bankr. Case. No. 19-34054-sgj-11  
§  
Reorganized Debtor. §

**ORDER DENYING AS MOOT THE HIGHLAND PARTIES' MOTION TO QUASH  
SUBPOENAS SERVED BY THE DUGABOY INVESTMENT TRUST OR FOR A  
PROTECTIVE ORDER [DE #3520]**

On September 14, 2022, Highland Capital Management, L.P. ("Highland") filed *The Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order* ("Motion to Quash") [DE#3520], seeking an order from this court quashing four subpoenas attached to the Motion to Quash as Exhibits 1 through 4 that were issued by The Dugaboy Investment Trust ("Dugaboy") and served on Highland, HCMLP GP, LLC, the HCMLP Claimant Trust, and Development Specialists, Inc. in connection with a contested matter initiated by Dugaboy by the filing, on June 30, 2022, of its *Motion for the Determination of the Value of the*

*Estate and Assets Held by the Claimant Trust* (the “Valuation Motion”) [DE #3382]<sup>1</sup> seeking to have the Court determine “the current value of the estate and an accounting of the assets currently held the Claimant Trust and available for distribution to creditors.” Valuation Motion, at 1.

A status hearing was held on the Valuation Motions and the Motion to Quash on November 15, 2022, during which the court expressed concerns regarding the procedural posture of the Valuation Motions: whether the relief sought in the Valuation Motions must be requested in an adversary proceeding. Following briefing on the procedural issue, on December 7, 2022, the court entered its December 6, 2022 *Order Denying Motion [DE #3382] and Supplemental Motion [DE #3533] of Dugaboy Investment Trust Due to Procedural Deficiency: Adversary Proceeding Is Required* (“Order Denying Valuation Motions”) [DE #3645], denying the Valuation Motions as procedurally deficient, without prejudice to the filing of an adversary proceeding to seek the relief sought in the Valuation Motions. The entry of the Order Denying Valuation Motions has rendered the pending Motion to Quash moot. Accordingly,

**IT IS ORDERED** that the Motion to Quash, be, and hereby is, **DENIED**, as moot.

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<sup>1</sup> On September 21, 2022, Dugaboy filed a “*Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust*” [DE# 3533] (together with the Valuation Motion, the “Valuation Motions”).

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*Attorneys for Hunter Mountain Investment Trust*

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	

**HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY MOTION FOR  
LEAVE TO FILE VERIFIED ADVERARY PROCEEDING**

Hunter Mountain Investment Trust (“HMIT”), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding (“Motion”), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. (“HCM” or “Reorganized Debtor”) and the Highland Claimant Trust against Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”), Farallon

Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”), James P. Seery, Jr. (“Seery”) and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively “Respondents” or “Proposed Defendants”).

### I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court’s “gatekeeping” orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the “Plan”).<sup>1</sup> A copy of HMIT’s proposed Verified Adversary Proceeding (“Adversary Proceeding”) is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings,<sup>2</sup> as well as the declarations of James Dondero, dated May 2022 (Ex. 2), James Dondero, dated February 2023 (Ex. 3), and Sawnie A. McEntire with attached evidence (Ex. 4).<sup>3</sup>

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<sup>1</sup> The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

<sup>2</sup> Unless otherwise referenced, all references to evidence involving documents filed in the Debtor’s bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by “Doc.” reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

<sup>3</sup> The supporting declarations will be cited as Dondero 2022 Dec. (Ex. 2), Dondero 2023 Dec. (Ex. 3), and McEntire Dec. (Ex. 4).

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.<sup>4</sup>

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").<sup>5</sup> Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,<sup>6</sup> including a fraud upon innocent stakeholders, as well as breaches of fiduciary

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<sup>4</sup> Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

<sup>5</sup> Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

<sup>6</sup> Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.<sup>7</sup> Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.<sup>8</sup> Because this Motion is subject to the

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proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

<sup>7</sup> The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of \$23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

<sup>8</sup> HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceedings were conducted in the 191<sup>st</sup> Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. *See* McEntire Dec. Ex. 4 and the attached Ex. 4-A. Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.<sup>8</sup> The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023.<sup>9</sup> Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.<sup>10</sup>

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

<sup>9</sup> See Dec. of Sawnie McEntire, Ex. 4.

<sup>10</sup> HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

## II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;<sup>11</sup> (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

## III. Standing

8. **HMIT**. Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

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time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

<sup>11</sup> In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,<sup>12</sup> this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

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<sup>12</sup> The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.<sup>13</sup> Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.<sup>14</sup>

12. The “classic example” of a proper derivative action is when a debtor-in-possession is “unable or unwilling to fulfill its obligations” to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT’s proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the “Estate Representative.”<sup>15</sup> Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to “monitor and oversee the administration of the Claimant Trust and the Claimant Trustee’s performance . . . .”<sup>16</sup>

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<sup>13</sup> Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

<sup>14</sup> See Footnote 8, *infra*. In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

<sup>15</sup> See Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

<sup>16</sup> *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates.

Yet, it is clear that any *appropriately designated party* also may bring derivative claims.

*In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In*

*re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re*

*Cooper*:

In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

*In re Cooper*, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that “[c]onflicts of

interest are, of course, frequently encountered in Chapter 11, where the metaphor of the

‘fox guarding the hen house’ is often apropos”); *see also In re McConnell*, 122 B.R. 41, 43-

44 (Bankr. S.D. Tex. 1989) (“[I]ndividual creditors can also act in lieu of the trustee or

debtor-in-possession . . .”). Here, the Proposed Defendants are the “*foxes guarding the hen*

*house*,” and their conflicts of interest abound.<sup>17</sup> Proceeding in a derivative capacity is

necessary, if not critical.

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<sup>17</sup> *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with “the benefit of non-public information acquired as a fiduciary” for the “dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest.”), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) (“Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.”).

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion, which is supported by objective evidence contained in historical filings in the bankruptcy proceedings, also incorporates sworn declarations. At the very least, this additional evidence satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.<sup>18</sup> This evidence also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over \$100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total \$397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

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<sup>18</sup> HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of \$365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately \$32 million in allowed claims.<sup>19</sup>

17. As of December 31, 2022, the Claimant Trust has distributed \$255,201,228.<sup>20</sup> On a *pro rata* basis, that means that innocent creditors have received approximately \$22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately \$9,627,000.

18. Muck and Jessup already have received approximately \$232.8 million on their Claims. Assuming and original investment of approximately \$160 million, this represents over \$72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.<sup>21</sup>

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

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<sup>19</sup> Doc. 3653.

<sup>20</sup> *Id.*

<sup>21</sup> Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just “guard the hen house,” but to also open the door and take what they want.<sup>22</sup> HMIT seeks a declaratory judgment of its rights, accordingly.

#### IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”). He also served as member of the Debtor’s Independent Board.<sup>23</sup> He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor’s Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).<sup>24</sup>

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<sup>22</sup> “The doctrine of ‘unclean hands’ provides that “a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy.” *Portnoy v. Cryo-Cell Int’l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

<sup>23</sup> Seery is the beneficiary of the Court’s “gatekeeping” orders and is an “exculpated” party in his capacity as an Independent Director. He is also a “Protected Party.”

<sup>24</sup> The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery’s fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims.<sup>25</sup> The record is clear that Muck and Jessup *did not exist* before confirmation of the Plan in February 2021.<sup>26</sup> Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.<sup>27</sup> When they purchased the claims at issue, Muck and Jessup were *not* acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

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<sup>25</sup> See Ex. 4-B, Rule 202 Transcript at 55:22-25.

<sup>26</sup> See McEntire Dec., Ex. 4, Ex. 4-D, Ex. 4-E. Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

<sup>27</sup> See Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory “insiders” with duties owed directly to HMIT at a time when HMIT was the largest equity holder.<sup>28</sup> See *S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) (“The corporate insider is under a duty to ‘disclose or abstain’ —he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether.”). In this context, there is no credible doubt that Farallon’s and Stonehill’s dealings with Seery were *not* arms-length. Again, Farallon and Stonehill were Seery’s past business partners and close allies.<sup>29</sup> By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery’s compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.<sup>30</sup>

It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

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<sup>28</sup> Because of their “insider” status, this Court should closely scrutinize the transactions at issue.

<sup>29</sup> Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM’s bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM’s CEO and CRO.

<sup>30</sup> Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon’s and Stonehill’s identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.<sup>31</sup> They also refused to disclose such details in response to a prior inquiry to their counsel.<sup>32</sup> Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.<sup>33</sup> Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, \*4 (Bankr. S.D. Tex. May 16, 2017) (Isgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, \*3 (Bankr. S.D. Tex. No. 2, 2010) (“The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate.” “In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.”) *ATP Oil*, 2017 WL 2123867 at \*4. That burden is easily satisfied here.

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<sup>31</sup> See McEntire Dec., Ex. 4.

<sup>32</sup> See McEntire Dec., Ex. 4, *see also*, Ex. 4-F.

<sup>33</sup> See Ex. 4-D, Ex. 4-E.

## V. Background

26. As part of this Court’s Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor’s Committee—was appointed to the Board of Directors (the “Board”) of Strand Advisors, Inc., (“Strand Advisors”), the Original Debtor’s general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor’s CEO and CRO.<sup>34</sup> Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor’s sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor’s CEO.<sup>35</sup>

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter “Claims”):<sup>36</sup>

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm
Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	<u>\$65 mm</u>	<u>\$60 mm</u>
<b>(Totals)</b>	\$270 mm	\$95 mm

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<sup>34</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>35</sup> See Doc. 1943, Order Approving Plan, p. 34.

<sup>36</sup> Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these “trades” occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.<sup>37</sup>

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor’s Estate,<sup>38</sup> while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But as reflected in the attached declarations, it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over \$160 million dollars to purchase the Claims in the absence of any publicly available information that

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<sup>37</sup> See Ex. 4-B, Rule 202 Transcript at 55:22-25.

<sup>38</sup> The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These “trades” become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM’s assets dropped over \$200 million from \$566 million to \$328.3 million.<sup>39</sup>
- HCM’s Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;<sup>40</sup>
  - This meant that Farallon and Stonehill invested more than \$103 million in Claims *when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.*
- In HCM’s Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%;<sup>41</sup>

30. In the third financial quarter of 2021, just over \$6 million of the projected \$205 million available to satisfy general unsecured creditors was disbursed.<sup>42</sup> No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—**\$45 million more than was ever projected.**<sup>43</sup>

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<sup>39</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>40</sup> Doc. 1875-1, Plan Supplement, p. 4.

<sup>41</sup> Doc 2949.

<sup>42</sup> Doc 3200.

<sup>43</sup> Doc 3582.

31. According to Highland Capital’s Motion for Exit Financing,<sup>44</sup> and a recent motion filed by Dugaboy Investment Trust,<sup>45</sup> there remain *substantial* assets to be monetized for the benefit of the Reorganized Debtor’s creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. As evidenced in the supporting declarations (Exs. 2 and 3):

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.<sup>46</sup>
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.<sup>47</sup>
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.’s (“Amazon”) interest in acquiring Metro-Goldwyn-Mayer Studios Inc. (“MGM”).<sup>48</sup>

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<sup>44</sup> Doc 2229.

<sup>45</sup> Doc 3382.

<sup>46</sup> See Ex. 2, 2022 Dondero Declaration.

<sup>47</sup> See Ex. 2, 2022 Dondero Declaration, Ex. 3, 2023 Dondero Declaration.

<sup>48</sup> See Ex. 3, 2023 Dondero Declaration.

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.<sup>49</sup>

Farallon can offer *no credible explanation* to explain its significant investment, and its refusal to sell at any price, *except* Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks."<sup>50</sup>

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.<sup>51</sup> Upon receipt of this material non-public

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<sup>49</sup> See Ex. 3, 2023 Dondero Declaration, *see also* Doc. 1875-1.

<sup>50</sup> Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

<sup>51</sup> See Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.<sup>52</sup> Because the Original Debtor additionally held direct interests in MGM,<sup>53</sup> the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.<sup>54</sup>

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

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<sup>52</sup> As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately \$22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

<sup>53</sup> See Doc. 2229, Motion for Exit Financing.

<sup>54</sup> Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

## VI. Argument

### A. *HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.*

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they *appear* to have *some* merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), *aff'd* 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look *only* to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is “plausible” and could survive a motion to dismiss. *See In re America’s Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y. 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that “[t]he requirement of a ‘colorable claim’ means only that the plaintiff must have an ‘arguable claim’ and not that the plaintiff must be able to succeed on that claim.” *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court’s gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving “bad faith,” “willful misconduct,” or “fraud.” Because the face of the Adversary Complaint alleges plausible facts, HMIT’s Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting declarations and documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

***B. Fraud***

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.<sup>55</sup>

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero.<sup>56</sup> Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.<sup>57</sup> Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

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<sup>55</sup> However, Delaware law is substantially similar on the elements of fraud. *See Malinals v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

<sup>56</sup> *See*, Dondero 2022 Dec., Ex. 2-1.

<sup>57</sup> *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.<sup>58</sup>

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory “insiders.” Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery’s involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery’s compensation

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<sup>58</sup> Ex. 3, 2023 Dondero Declaration.

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

***C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties***

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);<sup>59</sup> *Louisiana World*, 858 F.2d at 245-46 (5<sup>th</sup> Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

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<sup>59</sup> The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment.'" 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade “any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party.”<sup>60</sup> It now appears these representations were false when made. Seery’s alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became “temporary insiders” and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5<sup>th</sup> Cir. 2010) (“[E]ven

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<sup>60</sup> *See, e.g.,*

[https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=777026](https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026).

an individual who does not qualify as a traditional insider may become a ‘temporary insider’ if by entering ‘into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes.” *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who “became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization”; *vacated in part as a condition of settlement only*);<sup>61</sup> *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) (“[a]n insider is an entity or person with ‘a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm’s length with the debtor.’ ‘Thus, the term “insider” is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm’s length.” (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

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<sup>61</sup> Although the *Washington Mutual* case was subsequently vacated, the Court’s intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court’s logic was flawed or changed, and the court expressly noted that the parties’ settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, \*8 (Bankr. D. Del. Feb. 24, 2012) (“grant[ing] partial vacatur . . . in furtherance of the settlement embodied in the Plan,” and noting that “absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement.” (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain.*" Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

*D. Equitable Disallowance is an Appropriate Remedy*

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,<sup>62</sup> the Fifth Circuit **did not foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5<sup>th</sup> Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton* . . . and is not intended to limit the court's power in any way. . . . Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances." *In re Adelpia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelpia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).<sup>63</sup>

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

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<sup>62</sup> Equitable subordination is an inadequate remedy in this instance.

<sup>63</sup> In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, \*8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . in furtherance of the settlement embodied in the Plan," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors “are fully protected by subordination” and “[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it.” *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor’s CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. See *Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit’s decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure “at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes.” *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

#### ***E. Disgorgement and Unjust Enrichment***

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).<sup>64</sup>

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14<sup>th</sup> Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. See *Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

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<sup>64</sup> It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

#### *F. Declaratory Relief*

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

***G. HMIT has Direct Standing.***

67. The Texas Supreme Court recently held that “a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization.” *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional “incantation that a shareholder may not sue for the corporation’s injury” is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5<sup>th</sup> Circuit and “[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation”). Because Seery, Muck, Jessup, Stonehill, Farallon’s alleged actions devalued HMIT’s interest in the Debtor’s Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

## VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,  
**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/ Sawnie A. McEntire  
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*Attorneys for Hunter Mountain  
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**CERTIFICATE OF CONFERENCE**

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

**CERTIFICATE OF SERVICE**

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

# Exhibit 1

**Exhibit 1 to Emergency Motion**

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*Attorneys for Hunter Mountain Investment Trust*

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

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<b>In re:</b>	§	
	§	
	§	<b>Chapter 11</b>
<b>HIGHLAND CAPITAL</b>	§	
<b>MANAGEMENT, L.P.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	
<b>Debtor.</b>	§	
	§	
<hr/>		
<b>HUNTER MOUNTAIN INVESTMENT</b>	§	
<b>TRUST, INDIVIDUALLY, AND ON</b>	§	
<b>BEHALF OF THE DEBTOR</b>	§	
<b>HIGHLAND CAPITAL</b>	§	
<b>MANAGEMENT, L.P. AND THE</b>	§	<b>Adversary Proceeding No. _____</b>
<b>HIGHLAND CLAIMANT TRUST</b>	§	
	§	
<b>PLAINTIFFS,</b>	§	

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v. §  
 §  
 §  
 MUCK HOLDINGS, LLC, JESSUP §  
 HOLDINGS, LLC, FARALLON §  
 CAPITAL MANAGEMENT, LLC, §  
 STONEHILL CAPITAL §  
 MANAGEMENT, LLC, JAMES P. §  
 SEERY, JR., AND JOHN DOE §  
 DEFENDANTS NOS. 1-10

DEFENDANTS.

**VERIFIED ADVERSARY COMPLAINT**

Hunter Mountain Investment Trust (“HMIT”) files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. (“HCM” or “Reorganized Debtor”) and the Highland Claimant Trust (collectively “Plaintiffs”), complaining of Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”), Farallon Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”), James P. Seery, Jr., (“Seery”) and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively “Defendants”), and would show:

**I. Introduction**

1. HMIT brings this Verified Adversary Complaint (“Complaint”) on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust (“Claimant Trust”), as defined in the Claimant Trust Agreement (Doc. 3521-5) (“CTA”).<sup>1</sup> This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the “Debtor’s Estate”) were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the “Plan”) and as defined in the CTA. These assets include all “causes of action” that the Debtor’s Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

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<sup>1</sup> Solely in the alternative, and in the unlikely event HMIT’s proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be “Estate Claims” as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM’s bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT’s Emergency Motion for Leave (Doc. \_\_\_).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

## **II. Jurisdiction and Venue**

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a “related to” proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

### **III. Parties**

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants’ wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor’s bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13<sup>th</sup> Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

#### **IV. Facts**

##### ***A. Procedural Background***

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,<sup>2</sup> which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.<sup>3</sup>

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

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<sup>2</sup> Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

<sup>3</sup> Doc. 1.

*Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (“Governance Motion”).<sup>4</sup> On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.<sup>5</sup>

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the “Board”) of Strand, the Original Debtor’s general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.<sup>6</sup> Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.<sup>7</sup>

**B. *The Targeted Claims***

27. In his capacity as the Original Debtor’s CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the “Settling Parties”), resulting in the following allowed Claims:

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm

<sup>4</sup> Doc. 281.

<sup>5</sup> Doc. 339.

<sup>6</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>7</sup> See Doc. 1943, Order Approving Plan, p. 34.

Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	<u>\$65 mm</u>	<u>\$60 mm</u>
<b>(Totals)</b>	\$270 mm	\$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these “trades” took place within just a few weeks before the Plan’s Effective Date.<sup>8</sup> All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor’s bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

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<sup>8</sup> Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated \$160 million to acquire the Claims with a face amount of \$365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the *only* publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

- a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over \$200 million from \$566 million to \$364 million.<sup>9</sup>
- b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.<sup>10</sup>
  - o This meant that Farallon and Stonehill invested more than \$163 million in Claims when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.
- c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

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<sup>9</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>10</sup> Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the “Claims”) in April and August of 2021 in the combined amount of \$163 million.<sup>11</sup>

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee’s claim for \$78 million.<sup>12</sup> Upon information and belief, the \$23 million Acis claim<sup>13</sup> was sold to Farallon/Muck for \$8 million. Upon information and belief, HarbourVest sold its combined \$80 million in claims to Farallon/Muck for \$27 million. UBS sold its combined \$125 million in claims for \$50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, *the total projected payout was only \$35 million*. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor’s Estate projected a zero dollar return on all such Claims.

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<sup>11</sup> Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

<sup>12</sup> July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

<sup>13</sup> Seery/HCM have argued that \$10 million of the Acis claim is self-funding.

**C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.***

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").<sup>14</sup>

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.<sup>15</sup> Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.<sup>16</sup> Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor" — *i.e.*, one that was not subject to typical bankruptcy reporting requirements.<sup>17</sup>

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<sup>14</sup> See Doc. 2229, p. 6.

<sup>15</sup> See Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

<sup>16</sup> Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

<sup>17</sup> Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers<sup>18</sup> where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,<sup>19</sup> which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee<sup>20</sup> and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

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<sup>18</sup> Seery Resume [Doc. 281-2].

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

<sup>20</sup> Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

**D. Distributions**

41. The MGM sale was ultimately consummated in March 2022 for \$6.1 billion in cash, plus \$2.5 billion in debt that Amazon assumed and immediately repaid.<sup>21</sup>

42. By the end of Q3 2021, just over \$6 million of the projected \$205 million available for general unsecured claimants had been disbursed.<sup>22</sup> No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—\$45 million more than was *ever* projected.<sup>23</sup> Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed \$255,201,228. On a pro rata basis, that means that innocent creditors have received approximately \$22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately \$9,627,000.

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<sup>21</sup> Amazon Q1 2022 10-Q.

<sup>22</sup> Doc. 3200.

<sup>23</sup> Doc. 3582.

44. Muck and Jessup already have received approximately \$232.8 million on their Claims. Assuming an original investment of approximately \$160 million, this represents over \$72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

## **V. Causes of Action**

### ***A. Count I (against Seery): Breach of Fiduciary Duty***

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

**B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty**

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

*C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure*

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

***D. Count IV (against all Defendants): Conspiracy***

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

*E. Count V (against Muck and Jessup): Equitable Disallowance*

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

***F. Count VI (against all Defendants): Unjust Enrichment and Constructive Trust***

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

***F. Count VI (Against all Defendants): Declaratory Relief***

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that “a proceeding to recover property or money,” may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

- a. There is a ripe controversy concerning HMIT’s rights and entitlements under the Claimant Trust Agreement;
- b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;
- c. HMIT’s status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;
- d. HMIT’s status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT’s status as a Claimant Trust Beneficiary is fully vested when all of Muck’s and Jessup’s trust interests are subordinated to the trust interests held by HMIT;
- e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery’s fraudulent conduct, bad faith, willful misconduct and unclean hands;

- f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;
- g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

### **VI. Punitive Damages**

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

### **VII. Prayer**

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);
2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;
3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;
4. Imposition of a constructive trust;

5. Declaratory relief as described herein;
6. An award of actual damages as described herein;
7. An award of exemplary damages as allowed by law;
8. Pre- and post-judgment interest; and,
9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/\_\_\_\_\_

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*Attorneys for Hunter Mountain  
Investment Trust*

# Exhibit 2

CAUSE NO. DC-21-09534

IN RE JAMES DONDERO,

*Petitioner.*

§ IN THE DISTRICT COURT  
§  
§ 95th JUDICIAL DISTRICT  
§  
§ DALLAS COUNTY, TEXAS

DECLARATION OF JAMES DONDERO

COUNTY OF DALLAS §  
§  
STATE OF TEXAS §

Mr. James Dondero provides this unsworn declaration under TEXAS CIVIL PRACTICE & REMEDIES CODE § 132.001.

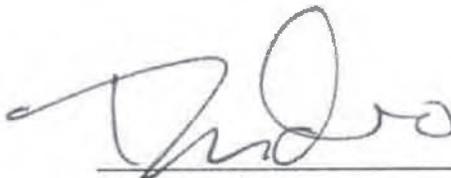
1. My name is James Dondero. I declare under penalty of perjury that I am over the age of 18 and of sound mind and competent to make this declaration.

2. Earlier this year I retained investigators to look into certain activities involving the respondents in the above-styled case and the related bankruptcy proceedings. Last year, I called Farallon's Michael Lin about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Mr. Seery had testified in court, it made no sense to me that Mr. Lin would think that the claims were worth more than what Mr. Seery testified under oath was the value of the bankruptcy claims.

3. In addition to my role as equity holder in the Crusader Funds, I have an interest in ensuring that the claims purchased by Respondents are not used as a means to deprive the equity holders of their share of the funds. It has become obvious that despite the fact that the bankrupt estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights.

4. Accordingly, I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee. True and correct copies of the reports, which were created in the ordinary course, and their attachments, are attached hereto as Exhibits A and B. A true and correct copy of the letter I received from Alvarez and Marsal is attached as Exhibit C hereto.

My name is James Dondero, my birthday is on June 29, 1962. My address is 300 Crescent Court,  
Suite 700, Dallas, Texas 75201. I declare under penalty of perjury that the foregoing testimony is  
true and correct and is within my personal knowledge.



James Dondero

May 31, 2022

Date

**HELLER, DRAPER & HORN, L.L.C.**  
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EDWARD M. HELLER  
(1926-2013)

October 5, 2021

Mrs. Nan R. Eitel  
Office of the General Counsel  
Executive Office for U.S. Trustees  
20 Massachusetts Avenue, NW  
8th Floor  
Washington, DC 20530

**Re: *Highland Capital Management, L.P. – USBC Case No. 19-34054sgj11***

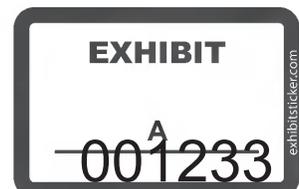
Dear Nan,

The purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the Official Committee of Unsecured Creditors (“Creditors’ Committee”) in the bankruptcy of Highland Capital Management, L.P. (“Highland” or “Debtor”). As described in detail below, there is sufficient evidence to warrant an immediate investigation into whether non-public inside information was furnished to claims purchasers. Further, there is reason to suspect that selling Creditors’ Committee members may have violated their fiduciary duties to the estate by tying themselves to claims sales at a time when they should have been considering meaningful offers to resolve the bankruptcy. Indeed, three of four Committee members sold their claims without advance disclosure, in violation of applicable guidelines from the U.S. Trustee’s Office. This letter contains a description of information and evidence we have been able to gather, and which we hope your office will take seriously.

By way of background, Highland, an SEC-registered investment adviser, filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on October 16, 2019, listing over \$550 million in assets and net \$110 million in liabilities. The case eventually was transferred to the Northern District of Texas, to Judge Stacey G.C. Jernigan. Highland’s decision to seek bankruptcy protection primarily was driven by an expected net \$110 million arbitration award in favor of the “Redeemer Committee.”<sup>1</sup> After nearly 30 years of successful operations, Highland and its co-founder, James Dondero, were advised by Debtor’s counsel that a court-approved restructuring of the award in Delaware was in Highland’s best interest.

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<sup>1</sup> The “Redeemer Committee” was a group of investors in a Debtor-managed fund called the “Crusader Fund” that sought to redeem their interests during the global financial crisis. To avoid a run on the fund at low-watermark prices, the fund manager temporarily suspended redemptions, which resulted in a dispute between the investors and the fund manager. The ultimate resolution involved the formation of the “Redeemer Committee” and an orderly liquidation of the fund, which resulted in the investors receiving their investment plus a return versus the 20 cents on the dollar they would have received had the fund been liquidated when the redemption requests were made.



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I became involved in Highland’s bankruptcy through my representation of The Dugaboy Investment Trust (“Dugaboy”), an irrevocable trust of which Mr. Dondero is the primary beneficiary. Although there were many issues raised by Dugaboy and others in the case where we disagreed with the Court’s rulings, we will address those issues through the appeals process.

From the outset of the case, the Creditors’ Committee and the U.S. Trustee’s Office in Dallas pushed to replace the existing management of the Debtor. To avoid a protracted dispute and to facilitate the restructuring, on January 9, 2020, Mr. Dondero reached an agreement with the Creditors’ Committee to resign as the sole director of the Debtor’s general partner, on the condition that he would be replaced by three independent directors who would act as fiduciaries of the estate and work to restructure Highland’s business so it could continue operating and emerge from bankruptcy as a going concern. The agreement approved by the Bankruptcy Court allowed Mr. Dondero, UBS (which held one of the largest claims against the estate), and the Redeemer Committee each to choose one director and also established protocols for operations going forward. Mr. Dondero chose The Honorable Former Judge Russell F. Nelms, UBS chose John Dubel, and the Redeemer Committee chose James Seery.<sup>2</sup> It was expected that the new, independent management would not only preserve Highland’s business but would also preserve jobs and enable continued collaboration with charitable causes supported by Highland and Mr. Dondero.

Judge Jernigan confirmed Highland’s Fifth Amended Plan of Reorganization on February 22, 2021 (the “Plan”). We have appealed certain aspects of the Plan and will rely upon the Fifth Circuit Court of Appeals to determine whether our arguments have merit. I write instead to call to your attention the possible disclosure of non-public information by Committee members and other insiders and to seek review of actions by Committee members that may have breached their fiduciary duties—both serious abuses of process.

**1. The Bankruptcy Proceedings Lacked The Required Transparency, Due In Part To the Debtor’s Failure To File Rule 2015.3 Reports**

Congress, when it drafted the Bankruptcy Code and created the Office of the United States Trustee, intended to ensure that an impartial party oversaw the enforcement of all rules and guidelines in bankruptcy. Since that time, the Executive Office for United States Trustees (the “EOUST”) has issued guidance and published rules designed to effectuate that purpose. To that end, EOUST recently published a final rule entitled “*Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11*” (the “Periodic Reporting Requirements”). The Periodic Reporting Requirements reaffirmed the EOUST’s commitment to maintaining “uniformity and transparency regarding a debtor’s financial condition and business activities” and “to inform creditors and other interested parties of the debtor’s financial affairs.” 85 Fed. Reg. 82906. The goal of the Periodic Reporting Requirements is to “assist the court and parties in interest in ascertaining, [among other things], the following: (1) Whether there is a substantial or continuing loss to or diminution of the bankruptcy estate; . . . (3) whether there exists gross mismanagement of the bankruptcy estate; . . . [and] (6) whether the debtor is engaging in the unauthorized disposition of assets through sales or otherwise . . . .” *Id.*

Transparency has long been an important feature of federal bankruptcy proceedings. The EOUST instructs that “Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate’s administration as parties in interest request; and file periodic reports and summaries of a debtor’s business, including a statement of receipts and disbursements, and such other

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<sup>2</sup> See Appendix, pp. A-3 - A-14.

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information as the United States Trustee or the United States Bankruptcy Court requires.” See <http://justice.gov/ust/chapter-11-information> (citing 11 U.S.C. § 1106(a)(1), 1107(a)). And Federal Rule of Bankruptcy Procedure 2015.3(a) states that “the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest.” This rule requires the trustee or a debtor in possession to file a report for each non-debtor affiliate prior to the first meeting of creditors and every six months thereafter until the effective date of a plan of reorganization. Fed R. Bankr. P. 2015.3(b). Importantly, the rule does not absolve a debtor from filing reports due prior to the effective date merely because a plan has become effective.<sup>3</sup> Notably, the U.S. Trustee has the duty to ensure that debtors in possession properly and timely file all required reports. 28 U.S.C. § 1112(b)(4)(F), (H).

The entire purpose of these guidelines and rules is to ensure that external stakeholders can fairly evaluate the progress of bankruptcy proceedings, including compliance with legal requirements. In fact, 11 U.S.C. § 1102(b)(3) requires a creditors’ committee to share information it receives with those who “hold claims of the kind represented by the committee” but who are not appointed to the committee. In the case of the Highland bankruptcy, the transparency that the EOUST mandates and that creditors’ committees are supposed to facilitate has been conspicuously absent. I have been involved in a number of bankruptcy cases representing publicly-traded debtors with affiliated non-debtor entities, much akin to Highland’s structure here. In those cases, when asked by third parties (shareholders or potential claims purchasers) for information, I directed them to the schedules, monthly reports, and Rule 2015.3 reports. In this case, however, no Rule 2015.3 reports were filed, and financial information that might otherwise be gleaned from the Bankruptcy Court record is unavailable because a large number of documents were filed under seal or heavily redacted. As a result, the only means to make an informed decision as to whether to purchase creditor claims and what to pay for those claims had to be obtained from non-public sources.

It bears repeating that the Debtor and its related and affiliated entities failed to file *any* of the reports required under Bankruptcy Rule 2015.3. There should have been at least four such reports filed on behalf of the Debtor and its affiliates during the bankruptcy proceedings. The U.S. Trustee’s Office in Dallas did nothing to compel compliance with the rule.

The Debtor’s failure to file the required Rule 2015.3 reports was brought to the attention of the Debtor, the Bankruptcy Court, and the U.S. Trustee’s Office. During the hearing on Plan confirmation, the Debtor was questioned about the failure to file the reports. The sole excuse offered by the Debtor’s Chief Restructuring Officer and Chief Executive Officer, Mr. Seery, was that the task “fell through the cracks.”<sup>4</sup> This excuse makes no sense in light of the years of bankruptcy experience of the Debtor’s counsel and financial advisors. Nor did the Debtor or its counsel ever attempt to show “cause” to gain exemption from the reporting requirement. That is because there was no good reason for the Debtor’s failure to file the required reports. In fact, although the Debtor and the Creditors’ Committee often refer to the Debtor’s structure as a “byzantine empire,” the assets of the estate fall into a handful of discrete investments, most of which have audited financials and/or are required to make monthly or quarterly net-asset-value or fair-value determinations.<sup>5</sup> Rather than disclose financial information that was readily

<sup>3</sup> After notice and a hearing, the bankruptcy court may grant relief from the Rule 2015.3 disclosure requirement “for cause,” including that “the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available.” Fed. R. Bankr. 2015.3(d).

<sup>4</sup> See Doc. 1905 (Feb. 3, 2021 Hr’g Tr. at 49:5-21).

<sup>5</sup> During a deposition, the Debtor’s Chief Restructuring Officer, Mr. Seery, identified most of the Debtor’s assets “[o]ff the top of [his] head” and acknowledged that he had a subsidiary ledger that detailed the assets held by entities

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available, the Debtor appears to have taken deliberate and strategic steps to avoid transparency, and the U.S. Trustee's Office did nothing to rectify the problem.

By contrast, the Debtor provided the Creditors' Committee with robust weekly information regarding (i) transactions involving assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly owned subsidiaries, (ii) transactions involving entities managed by the Debtor and in which the Debtor holds a direct or indirect interest, (iii) transactions involving entities managed by the Debtor but in which the Debtor does not hold a direct or indirect interest, (iv) transactions involving entities not managed by the Debtor but in which the Debtor holds a direct or indirect interest, (v) transactions involving entities not managed by the Debtor and in which the Debtor does not hold a direct or indirect interest, (vi) transactions involving non-discretionary accounts, and (vii) weekly budget-to-actuals reports referencing non-Debtor affiliates' 13-week cash flow budget. In other words, the Committee had real-time, actual information with respect to the financial affairs of non-debtor affiliates, and this is precisely the type of information that should have been disclosed to the public pursuant to Rule 2015.3.

After the claims at issue were sold, I filed a Motion to Compel compliance with the reporting requirement. Judge Jernigan held a hearing on the motion on June 10, 2021. Astoundingly, the U.S. Trustee's Office took no position on the Motion and did not even bother to attend the hearing. Ultimately, on September 7, 2021, the Court denied the Motion as "moot" because the Plan had by then gone effective. I have appealed that ruling because, again, the Plan becoming effective does not alleviate the Debtor's burden of filing the requisite reports.

The U.S. Trustee's Office also failed to object to the Court's order confirming the Debtor's Plan, in which the Court appears to have released the Debtor from its obligation to file any reports after the effective date of the Plan that were due for any period prior to the effective date, an order that likewise defeats any effort to demand transparency from the Debtor. The U.S. Trustee's failure to object to this portion of the Court's order is directly at odds with the spirit and mandate of the Periodic Reporting Requirements, which recognize the U.S. Trustee's duty to ensure that debtors timely file all required reports.

## **2. There Was No Transparency Regarding The Financial Affairs Of Non-Debtor Affiliates Or Transactions Between The Debtor And Its Affiliates**

The Debtor's failure to file Rule 2015.3 reports for affiliate entities created additional transparency problems for interested parties and creditors wishing to evaluate assets held in non-Debtor subsidiaries. In making an investment decision, it would be important to know if the assets of a subsidiary consisted of cash, marketable securities, other liquid assets, or operating businesses/other illiquid assets. The Debtor's failure to file Rule 2015.3 reports hid from public view the composition of the assets and the corresponding liabilities at the subsidiary level. During the course of proceedings, the Debtor sold \$172 million in assets, which altered the asset mix and liabilities of the Debtor's affiliates and controlled entities. Although Judge Jernigan held that such sales did not require Court approval, a Rule 2015.3 report would have revealed the mix of assets and the corresponding reduction in liabilities of the affiliated or controlled entity. In the Appendix, I have included a schedule of such sales.

Of particular note, the Court authorized the Debtor to place assets that it acquired with "allowed claim dollars" from HarbourVest (a creditor with a contested claim against the estate) into a specially-created non-debtor entity ("SPE").<sup>6</sup> The Debtor's motion to settle the

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below the Debtor. *See* Appendix, p. A-19 (Jan. 29, 2021 Dep. Tr. at 22:4-10; 23:1-29:10).

<sup>6</sup> Prior to Highland's bankruptcy, HarbourVest had invested \$80 million into a Highland fund called Acis Loan Funding, later rebranded as Highland CLO Funding, Ltd. ("HCLOF"). A dispute later arose between HarbourVest

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HarbourVest claim valued the asset acquired (HarbourVest's interest in HCLOF) at \$22 million. In reality, that asset had a value of \$40 million, and had the asset been placed in the Debtor entity, its true value would have been reflected in the Debtor's subsequent reporting. By instead placing the asset into an SPE, the Debtor hid from public view the true value of the asset as well as information relating to its disposition; all the public saw was the filed valuation of the asset. The U.S. Trustee did not object to the Debtor's placement of the HarbourVest assets into an SPE and apparently just deferred to the judgment of the Creditors' Committee about whether this was appropriate.<sup>7</sup> Again, when the U.S. Trustee's Office does not require transparency, lack of transparency significantly increases the need for non-public information. Because the HarbourVest assets were placed in a non-reporting entity, no potential claims buyer without insider information could possibly ascertain how the acquisition would impact the estate.

### **3. The Plan's Improper Releases And Exculpation Provisions Destroyed Third-Party Rights**

In addition, the Debtor's Plan contains sweeping release, exculpation provisions, and a channeling injunction requiring that any permitted causes of action to be vetted and resolved by the Bankruptcy Court. On their face, these provisions violate *Pacific Lumber*, in with the United States Court of Appeals for the Fifth Circuit rejected similarly broad exculpation clauses. The U.S. Trustee's Office in Dallas has, in all cases but this one, vigorously protected the rights of third parties against such exculpation clauses. In this case, the U.S. Trustee's Office objected to the Plan, but it did not pursue that objection at the confirmation hearing (nor even bother to attend the first day of the hearing),<sup>8</sup> nor did it appeal the order of the Bankruptcy Court approving the Plan and its exculpation clauses.

As a result of this failure, third-party investors in entities managed by the Debtor are now barred from asserting or channeled into the Bankruptcy Court to assert any claim against the Debtor or its management for transactions that occurred at the non-debtor affiliate level. Those investors' claims are barred notwithstanding that they were not notified of the releases and have never been given any information with which to evaluate their potential claims, nor given the opportunity to "opt out." Conversely, the releases insulate claims purchasers from the risk of potential actions by investors in funds managed by the Debtor (for breach of fiduciary duty, diminution in value, or otherwise). These releases are directly at odds with investors' expectations when they invest in managed funds—i.e., that fund managers will act in a fiduciary capacity to maximize investors' returns and that investors will have recourse for any failure to do so. While the agreements executed by investors may limit the exposure of fund managers, typically those provisions require the fund manager to obtain a third-party fairness opinion where there is a conflict between the manager's duty to the estate and his duty to fund investors.

As an example, the Court approved the settlement of UBS's claim against the Debtor and two funds managed by the Debtor (collectively referred to as "MultiStrat"). Pursuant to that settlement, MultiStrat agreed to pay UBS \$18.5 million and represented that it was advised by "independent legal counsel" in the negotiation of the settlement.<sup>9</sup> That representation is untrue;

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and Highland, and HarbourVest filed claims in the Highland bankruptcy approximating \$300 million in relation to damages allegedly due to HarbourVest as a result of that dispute. Although the Debtor initially placed no value on HarbourVest's claim (the Debtor's monthly operating report for December 2020 indicated that HarbourVest's allowed claims would be \$0), eventually the Debtor entered into a settlement with HarbourVest—approved by the Bankruptcy Court—which entitled HarbourVest to \$80 million in claims. In return, HarbourVest agreed to convey its interest in HCLOF to the SPE designated by the Debtor and to vote in favor of the Debtor's Plan.

<sup>7</sup> Dugaboy has appealed the Bankruptcy Court's ruling approving the placement of the HarbourVest assets into a non-reporting SPE.

<sup>8</sup> See Doc. 1894 (Feb. 2, 2021 Hr'g Tr. at 10:7-14).

<sup>9</sup> See Doc. 2389 (Order Approving Debtor's Settlement With UBS Securities LLC and UBS AG London Branch) at

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MultiStrat did not have separate legal counsel and instead was represented only by the Debtor’s counsel.<sup>10</sup> If that representation and/or the terms of the UBS/MultiStrat settlement in some way unfairly impacted MultiStrat’s investors, they now have no recourse against the Debtor. The release and exculpation provisions in Highland’s Plan do not afford third parties any meaningful recourse to third parties, even when they are negatively impacted by misrepresentations of the type contained in the UBS/MultiStrat settlement or when their interests are impaired by fund managers’ failure to obtain fairness opinions to resolve conflicts of interest.

The U.S. Trustee’s Office recently has argued in the context of the bankruptcy of Purdue Pharmaceuticals that release and exculpations clauses akin to those contained in Highland’s Plan violate both the Bankruptcy Code and the Due Process Clause of the United States Constitution.<sup>11</sup> It has been the U.S. Trustee’s position that where, as here, third parties whose claims are being released did not receive notice of the releases and had no way of knowing, based on the Plan’s language, what claims were extinguished, third-party releases are contrary to law.<sup>12</sup> This position comports with Fifth Circuit case law, which makes clear that releases must be consensual, and that the released party must make a substantial contribution in exchange for any release. Highland’s Plan does not provide for consent by third parties (or an opt-out provision), nor does it require that released parties provide value for their releases. Under these circumstances, it is difficult to understand why the U.S. Trustee’s Office in Dallas did not lodge an objection to the Plan’s release and exculpation provisions. Several parties have appealed this issue to the Fifth Circuit.

#### 4. The Lack Of Transparency Facilitated Potential Insider Trading

The biggest problem with the lack of transparency at every step is that it created a need for access to non-public confidential information. The Debtor (as well as its advisors and professionals) and the Creditors’ Committee (and its counsel) were the only parties with access to critical information upon which any reasonable investor would rely. But the public did not.

In the context of this non-transparency, it is notable that three of the four members of the Creditors’ Committee and one non-committee member sold their claims to two buyers, Muck Holdings LLC (“Muck”) and Jessup Holdings LLC (“Jessup”). The four claims that were sold comprise the largest four claims in the Highland bankruptcy by a substantial margin,<sup>13</sup> collectively totaling almost \$270 million in Class 8 claims and \$95 million in Class 9 claims<sup>14</sup>:

<u>Claimant</u>	<u>Class 8 Claim</u>	<u>Class 9 Claims</u>	<u>Date Claim Settled</u>
Redeemer Committee	\$136,696,610	N/A	October 28, 2020
Acis Capital	\$23,000,000	N/A	October 28, 2020
HarbourVest	\$45,000,000	\$35,000,000	January 21, 2021
UBS	\$65,000,000	\$60,000,000	May 27, 2021
<b>TOTAL:</b>	<b>\$269,696,610</b>	<b>\$95,000,000</b>	

Muck is owned and controlled by Farallon Capital Management (“Farallon”), and we have reason to believe that Jessup is owned and controlled by Stonehill Capital Management (“Stonehill”). As the purchasers of the four largest claims in the bankruptcy, Muck (Farallon)

Ex. 1, §§ 1(b), 11; see Appendix, p. A-57.

<sup>10</sup> The Court’s order approving the UBS settlement is under appeal in part based on MultiStrat’s lack of independent legal counsel.

<sup>11</sup> See Memorandum of Law in Support of United States Trustee’s Expedited Motion for Stay of Confirmation Order, *In re Purdue Pharma, L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Doc. 3778 at 17-25.

<sup>12</sup> See *id.* at 22.

<sup>13</sup> See Appendix, p. A-25.

<sup>14</sup> Class 8 consists of general unsecured claims; Class 9 consists of subordinated claims.

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and Jessup (Stonehill) will oversee the liquidation of the Reorganized Debtor and the payment over time to creditors who have not sold their claims.

This is concerning because there is substantial evidence that Farallon and Stonehill may have been provided material, non-public information to induce their purchase of these claims.<sup>15</sup> In particular, there are three primary reasons we believe that non-public information was made available to facilitate these claims purchases:

- The scant publicly-available information regarding the Debtor’s estate ordinarily would have dissuaded sizeable investment in purchases of creditors’ claims;
- The information that actually was publicly available ordinarily would have compelled a prudent investor to conduct robust due diligence prior to purchasing the claims;
- Yet these claims purchasers spent in excess of \$100 million (and likely closer to \$150 million) on claims, ostensibly without any idea of what they were purchasing.

We believe the claims purchases of Stonehill and Farallon can be summarized as follows:

<u>Creditor</u>	<u>Class 8</u>	<u>Class 9</u>	<u>Purchaser</u>	<u>Purchase Price</u>
Redeemer	\$137.0	\$0.0	Stonehill	\$78.0 <sup>16</sup>
ACIS	\$23.0	\$0.0	Farallon	\$8.0
HarbourVest	\$45.0	\$35.0	Farallon	\$27.0
UBS	\$65.0	\$60.0	Stonehill and Farallon	\$50.0 <sup>17</sup>

To elaborate on our reasons for suspicion, an analysis of publicly-available information would have revealed to any potential investor that:

- There was a \$200 million dissipation in the estate’s asset value, which started at a scheduled amount of \$556 million on October 16, 2019, then plummeted to \$328 million as of September 30, 2020, and then increased only slightly to \$364 million as of January 31, 2021.<sup>18</sup>

<sup>15</sup> A timeline of relevant events can be found at Appendix, p. A-26.

<sup>16</sup> See Appendix, pp. A-70 – A-71. Because the transaction included “the majority of the remaining investments held by the Crusader Funds,” the net amount paid by Stonehill for the Claims was approximately \$65 million.

<sup>17</sup> Based on the publicly-available information at the time Stonehill and Farallon purchased the UBS claim, the purchase made no economic sense. At the time, the publicly-disclosed Plan Analysis estimated that there would be a 71.32% distribution to Class 8 creditors and a 0.00% distribution to Class 9 creditors, which would mean that Stonehill and Farallon paid \$50 million for claims worth only \$46.4 million. See Appendix, p. A-28. If, however, Stonehill and Farallon had access to information that only came to light later—i.e., that the estate was actually worth much, much more (between \$472-600 million as opposed to \$364 million)—then it makes sense that they would pay what they did to buy the UBS claim.

<sup>18</sup> Compare Jan. 31, 2021 Monthly Operating Report [Doc. 2030], with Disclosure Statement (approved on Nov. 24, 2020) [Doc. 1473]. The increase in value between September 2020 and January 2021 is attributable to the Debtor’s settlement with HarbourVest, which granted HarbourVest a Class 8 claim of \$45 million and a Class 9 Claim of \$35 million, and in exchange the Debtor received HarbourVest’s interest in HCLOF, which we believe was worth approximately \$44.3 million as of January 31, 2021. See Appendix, p. A-25. It is also notable that the January 2021

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- The total amount of allowed claims against the estate increased by \$236 million; indeed, just between the time the Debtor's disclosure statement was approved on November 24, 2020, and the time the Debtor's exhibits were introduced at the confirmation hearing, the amount of allowed claims increased by \$100 million.
- Due to the decrease in the value of the Debtor's assets and the increase in the allowed claims amount, the ultimate projected recovery for creditors in bankruptcy went from 87.44% to 62.99% in just a matter of months.<sup>19</sup>

No prudent investor or hedge fund investing third-party money would purchase substantial claims out of the Highland estate based on this publicly-available information without conducting thorough due diligence to be satisfied that the assets of the estate would not continue to deteriorate or that the allowed claims against the estate would not continue to grow.

There are other good reasons to investigate whether Muck and Jessup (through Farallon and Stonehill) had access to material, non-public information that influenced their claims purchasing. In particular, there are close relationships between the claims purchasers, on the one hand, and the selling Creditors' Committee members and the Debtor's management, on the other hand. What follows is our understanding of those relationships:

- Farallon and Stonehill have long-standing, material, undisclosed relationships with the members of the Creditors' Committee and Mr. Seery.<sup>20</sup> Mr. Seery formerly was the Global Head of Fixed Income Loans at Lehman Bros. until its collapse in 2009. While at Lehman, Mr. Seery did a substantial amount of business with Farallon. After the Lehman collapse, Mr. Seery joined Sidley & Austin as co-head of the corporate restructuring and bankruptcy group, where he worked with Matt Clemente, counsel to the Creditors' Committee in these bankruptcy proceedings.
- In addition, Grovesnor, one of the lead investors in the Crusader Fund from the Redeemer Committee (which appointed Seery as its independent director) both played a substantial role on the Creditors' Committee and is a large investor in Farallon and Stonehill.
- According to Farallon principals Raj Patel and Michael Linn, while at Sidley, Mr. Seery represented Farallon in its acquisition of claims in the Lehman estate.
- Also while at Sidley, Mr. Seery represented the Steering Committee in the Blockbuster Video bankruptcy; Stonehill (through its Managing Member, John Motulsky) was one of the five members of the Steering Committee.
- Mr. Seery left Sidley in 2013 to become the President and Senior Investment Partner of River Birch Capital, a hedge fund founded by his former Lehman colleagues. He left River Birch in October 2017 just before the fund imploded. In 2017, River Birch and Stonehill Capital were two of the biggest note holders in the Toys R Us bankruptcy and were members of the Toys R Us creditors'

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monthly financial report values Class 8 claims at \$267 million, an exponential increase over their estimated value of \$74 million in December 2020.

<sup>19</sup> See Appendix, pp. A-25, A-28.

<sup>20</sup> See Appendix, pp. A-2; A-62 – A-69.

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committee.

It does not seem a coincidence that two firms with such significant ties to Mr. Seery have purchased \$365 million in claims. The nature of the relationships and the absence of public data warrants an investigation into whether the claims purchasers may have had access to non-public information.

Other transactions occurring during the Highland bankruptcy also reinforce the suspicion that insider trading occurred. In particular, it appears that one of the claims buyers, Stonehill, used non-public information obtained incident to the bankruptcy to purchase stock in NexPoint Strategic Opportunities Fund (NYSE: NHF), a publicly traded, closed-end '40 Act fund with many holdings in common with assets held in the Highland estate outlined above. Stonehill is a registered investment adviser with \$3 billion under management that has historically owned very few equity interests, particularly equity interests in a closed-end fund. As disclosed in SEC filings, Stonehill acquired enough stock in NHF during the second quarter of 2021 to make it Stonehill's eighth largest equity position.

The timing of the acquisitions of claims by Farallon and Stonehill also warrants investigation. In particular, although notices of the transfer of the claims were filed immediately after the confirmation of the Debtor's Plan and prior to the effective date of the Plan, it seems likely that negotiations began much earlier. Transactions of this magnitude do not take place overnight and typically require robust due diligence. We know, for example, that Muck was formed on March 9, 2021, more than a month before it filed notice that it was purchasing the Acis claim. If the negotiation or execution of a definitive agreement for the purchase began before or contemporaneously with Muck's formation, then there is every reason to investigate whether selling Creditors' Committee members and/or Debtor management provided Farallon with critical non-public information well before the Creditors' Committee members sold their claims and withdrew from the Committee. Indeed, Mr. Patel and Mr. Linn have stated to others that they purchased the Acis and HarbourVest claims in late January or early February. We believe an investigation will reveal whether negotiations of the sale and the purchase of claims from Creditors' Committee members preceded the confirmation of the Debtor's Plan and the resignation of those members from the Committee.

Likewise, correspondence from the fund adviser to the Crusader Fund indicates that the Crusader Fund and the Redeemer Committee had "consummated" the sale of the Redeemer Committee's claims and other assets on April 30, 2021, "for \$78 million in cash, which was paid in full to the Crusader Funds at closing."<sup>21</sup> We also know that there was a written agreement among Stonehill, the Crusader Fund, and the Redeemer Committee that potentially dates back to the fourth quarter of 2020. Presumably such an agreement, if it existed, would impose affirmative and negative covenants upon the seller and grant the purchaser discretionary approval rights during the pendency of the sale. An investigation by your office is necessary to determine whether there were any such agreement, which would necessarily conflict with the Creditors' Committee members' fiduciary obligations.

The sale of the claims by the members of the Creditors' Committee also violates the guidelines provided to committee members that require a selling committee member to obtain approval from the Bankruptcy Court prior to any sale of such member's claim. The instructions provided by the U.S. Trustee's Office (in this instance the Delaware Office) state:

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<sup>21</sup> See Appendix, pp. A-70 – A-71.

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In the event you are appointed to an official committee of creditors, the United States Trustee may require periodic certifications of your claims while the bankruptcy case is pending. Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing a creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion. You are hereby notified that the United States Trustee may share this information with the Securities and Exchange Commission if deemed appropriate.

In this case, no Court approval was ever sought or obtained, and the Dallas U.S. Trustee's Office took no action to enforce this guideline. The Creditors' Committee members were sophisticated entities, and they were privy to inside information that was not available to other unsecured creditors. For example, valuations of assets placed into a specially-created affiliated entities, such as the assets acquired in the HarbourVest settlement, and valuations of assets held by other entities owned or controlled by the Debtor, were available to the selling Creditors' Committee members, but not other creditors or parties-in-interest.

While claims trading itself is not necessarily prohibited, the circumstances surrounding claims trading often times prompt investigation due to the potential for abuse. This case warrants such an investigation due to the following:

- a) The selling parties were *three* of the four Creditors' Committee members, and each one had access to information they received in a fiduciary capacity;
- b) Some of the information they received would have been available to other parties-in-interest if Rule 2015.3 had been enforced;
- c) The sales allegedly occurred after the Plan was confirmed, and certain other matters immediately thereafter came to light, such as the Debtor's need for an exit loan (although the Debtor testified at the confirmation hearing that no loan was needed) and the inability of the Debtor to obtain Directors and Officer insurance;
- d) The Debtor settled a dispute with UBS and obligated itself (using estate assets) to pursue claims and transfers and to transfer certain recoveries to UBS, as opposed to distributing those recoveries to creditors, and the Debtor used third-party assets as consideration for the settlement<sup>22</sup>;
- e) The projected recovery to creditors changed significantly between the approval of the Disclosure Statement and the confirmation of the Debtor's Plan; and
- f) There was a suspicious purchase of stock by Stonehill in NHF, a closed-end fund that is publicly traded on the New York stock exchange. The Debtor's assets and the positions held by the closed-end fund are similar.

Further, there is reason to believe that insider claims-trading negatively impacted the estate's ultimate recovery. Immediately prior to the Plan confirmation hearing, Judge Jernigan suggested that the Creditors' Committee and Mr. Dondero attempt to reach a settlement. Mr. Dondero, through counsel, made numerous offers of settlement that would have maximized the estate's recovery, even going so far as to file a proposed Plan of Reorganization. The Creditors' Committee did not timely respond to these efforts. It was not until The Honorable Former Judge D. Michael Lynn, counsel for Mr. Dondero, reminded the Creditors' Committee counsel that its

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members had a fiduciary duty to respond that a response was forthcoming. Mr. Dondero's proposed plan offered a greater recovery than what the Debtor had reported would be the expected Plan recovery. The Creditors' Committee's failure to timely respond to that offer suggests that some members may have been contractually constrained from doing so, which itself warrants investigation.

We encourage the EOUST to question and explore whether, at the time that Mr. Dondero's proposed plan was filed, the Creditors' Committee members already had committed to sell their claims and therefore were contractually restricted from accepting Mr. Dondero's materially better offer. If that were the case, the contractual tie-up would have been a violation of the Committee members' fiduciary duties. The reason for the U.S. Trustee's guideline concerning the sale of claims by Committee members was to allow a public hearing on whether Committee members were acting within the bounds of their fiduciary duties to the estate incident to the sale of any claim. The failure to enforce this guideline has left open questions about sale of Committee members' claims that should have been disclosed and vetted in open court.

In summary, the failure of the U.S. Trustee's Office to demand appropriate reporting and transparency created an environment where parties needed to obtain and use non-public information to facilitate claims trading and potential violations of the fiduciary duties owed by Creditors' Committee members. At the very least, there is enough credible evidence to warrant an investigation. It is up to the bankruptcy bar to alert your office to any perceived abuses to ensure that the system is fair and transparent. The Bankruptcy Code is not written for those who hold the largest claims but, rather, it is designed to protect all stakeholders. A second Neiman Marcus should not be allowed to occur.

We would appreciate a meeting with your office at your earliest possible convenience to discuss the contents of this letter and to provide additional information and color that we believe will be valuable in making a determination about whether and what to investigate. In the interim, if you need any additional information or copies of any particular pleading, we would be happy to provide those at your request.

Very truly yours,

*/s/Douglas S. Draper*

Douglas S. Draper

DSD:dh

## Appendix

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Debtor Protocols [Doc. 466-1]

**I. Definitions**

- A. “Court” means the United States Bankruptcy Court for the Northern District of Texas.
- B. “NAV” means (A) with respect to an entity that is not a CLO, the value of such entity’s assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO’s gross assets less expenses calculated as of the quarter end prior to any Transaction.
- C. “Non-Discretionary Account” means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.
- D. “Related Entity” means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any “non-statutory” insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in Schedule B hereto (the “Related Entities Listing”); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor’s cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).
- E. “Stage 1” means the time period from the date of execution of a term sheet incorporating the protocols contained below the (“Term Sheet”) by all applicable parties until approval of the Term Sheet by the Court.
- F. “Stage 2” means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.
- G. “Stage 3” means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.
- H. “Transaction” means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

- I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.
- J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.
- K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

**II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners**

- A. **Covered Entities:** N/A (See entities above).
- B. **Operating Requirements**
  - 1. Ordinary Course Transactions do not require Court approval (All Stages).
    - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
    - b) Stage 3: ordinary course determined by the Debtor.
  - 2. Related Entity Transactions
    - a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
    - b) Stage 3:
      - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

- a) Except as set forth in (b) and (c) below, Transactions in excess of \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.
- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

**III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)**

- A. **Covered Entities:** See Schedule A hereto. Schedule A includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).<sup>1</sup>
- B. **Operating Requirements**
  1. Ordinary Course Transactions do not require Court approval (All Stages).
    - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
    - b) Stage 3: ordinary course determined by the Debtor.
  2. Related Entity Transactions

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<sup>1</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

- a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - b) Stage 3:
    - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
    - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.
3. **Third Party Transactions (All Stages)**
- a) Except as set forth in (b) and (c) below, Transactions in excess of \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.
- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

**IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest**

- A. **Covered Entities:** See Schedule A hereto. Schedule A includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.<sup>2</sup>
- B. **Operating Requirements**
1. Ordinary Course Transactions do not require Court approval (All Stages).
    - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
    - b) Stage 3: ordinary course determined by the Debtor.
  2. Related Entity Transactions
    - a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
    - b) Stage 3:
      - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
      - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.
  3. Third Party Transactions (All Stages):
    - a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) \$3,000,000 requires five business days advance notice to

<sup>2</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

**V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest**

- A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.<sup>3</sup>
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

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<sup>3</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

**VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest**

- A. Covered Entities: See Schedule A hereto. Schedule A includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.<sup>4</sup>
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

**VII. Transactions involving Non-Discretionary Accounts**

- A. Covered Entities: See Schedule A hereto. Schedule A includes or will include all non-discretionary accounts.<sup>5</sup>
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

**VIII. Additional Reporting Requirements – All Stages (to the extent applicable)**

- A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.
- B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

**IX. Shared Services**

- A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.
- B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

<sup>4</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

<sup>5</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

**X. Representations and Warranties**

- A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.
- B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.
- C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

**Schedule A<sup>6</sup>**

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
  - a) Rockwall II CDO Ltd.
  - b) Grayson CLO Ltd.
  - c) Eastland CLO Ltd.
  - d) Westchester CLO, Ltd.
  - e) Brentwood CLO Ltd.
  - f) Greenbriar CLO Ltd.
  - g) Highland Park CDO Ltd.
  - h) Liberty CLO Ltd.
  - i) Gleneagles CLO Ltd.
  - j) Stratford CLO Ltd.
  - k) Jasper CLO Ltd.
  - l) Rockwall DCO Ltd.
  - m) Red River CLO Ltd.
  - n) Hi V CLO Ltd.
  - o) Valhalla CLO Ltd.
  - p) Aberdeen CLO Ltd.
  - q) South Fork CLO Ltd.
  - r) Legacy CLO Ltd.
  - s) Pam Capital
  - t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

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<sup>6</sup> NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund (“Korean Fund”)
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

**Schedule B**

**Related Entities Listing (other than natural persons)**

**Schedule C**

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Seery Jan. 29, 2021 Testimony

Page 1

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

4 -----}

5 In Re: Chapter 11  
6 HIGHLAND CAPITAL Case No.  
7 MANAGEMENT, LP, 19-34054-SGJ 11

8

9 Debtor

10 -----

11

12

13 REMOTE DEPOSITION OF JAMES P. SEERY, JR.

14 January 29, 2021

15 10:11 a.m. EST

16

17

18

19

20

21

22

23

24 Reported by:  
Debra Stevens, RPR-CRR  
JOB NO. 189212

25

<p>1 January 29, 2021                  2 9:00 a.m. EST                  3                  4 Remote Deposition of JAMES P.                  5 SEERY, JR., held via Zoom                  6 conference, before Debra Stevens,                  7 RPR/CRR and a Notary Public of the                  8 State of New York.                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	Page 2	<p>1 REMOTE APPEARANCES:                  2                  3 Heller, Draper, Hayden, Patrick, &amp; Horn                  4 Attorneys for The Dugaboy Investment                  5 Trust and The Get Good Trust                  6 650 Poydras Street                  7 New Orleans, Louisiana 70130                  8                  9                  10 BY: DOUGLAS DRAPER, ESQ                  11                  12                  13 PACHULSKI STANG ZIEHL &amp; JONES                  14 For the Debtor and the Witness Herein                  15 780 Third Avenue                  16 New York, New York 10017                  17 BY: JOHN MORRIS, ESQ.                  18 JEFFREY POMERANTZ, ESQ.                  19 GREGORY DEMO, ESQ.                  20 IRA KHARASCH, ESQ.                  21                  22                  23                  24 (Continued)                  25</p>	Page 3
<p>1 REMOTE APPEARANCES: (Continued)                  2                  3 LATHAM &amp; WATKINS                  4 Attorneys for UBS                  5 885 Third Avenue                  6 New York, New York 10022                  7 BY: SHANNON McLAUGHLIN, ESQ.                  8                  9 JENNER &amp; BLOCK                  10 Attorneys for Redeemer Committee of                  11 Highland Crusader Fund                  12 919 Third Avenue                  13 New York, New York 10022                  14 BY: MARC B. HANKIN, ESQ.                  15                  16 SIDLEY AUSTIN                  17 Attorneys for Creditors' Committee                  18 2021 McKinney Avenue                  19 Dallas, Texas 75201                  20 BY: PENNY REID, ESQ.                  21 MATTHEW CLEMENTE, ESQ.                  22 PAIGE MONTGOMERY, ESQ.                  23                  24 (Continued)                  25</p>	Page 4	<p>1 REMOTE APPEARANCES: (Continued)                  2 KING &amp; SPALDING                  3 Attorneys for Highland CLO Funding, Ltd.                  4 500 West 2nd Street                  5 Austin, Texas 78701                  6 BY: REBECCA MATSUMURA, ESQ.                  7                  8 K&amp;L GATES                  9 Attorneys for Highland Capital Management                  10 Fund Advisors, L.P., et al.:                  11 4350 Lassiter at North Hills                  12 Avenue                  13 Raleigh, North Carolina 27609                  14 BY: EMILY MATHER, ESQ.                  15                  16 MUNSCH HARDT KOPF &amp; HARR                  17 Attorneys for Defendants Highland Capital                  18 Management Fund Advisors, LP; NexPoint                  19 Advisors, LP; Highland Income Fund;                  20 NexPoint Strategic Opportunities Fund and                  21 NexPoint Capital, Inc.:                  22 500 N. Akard Street                  23 Dallas, Texas 75201-6659                  24 BY: DAVOR RUKAVINA, ESQ.                  25 (Continued)</p>	Page 5

<p style="text-align: right;">Page 6</p> <p>1 REMOTE APPEARANCES (Continued)</p> <p>2</p> <p>3 BONDS ELLIS EPPICH SCHAFER JONES</p> <p>4 Attorneys for James Dondero,</p> <p>5 Party-in-Interest</p> <p>6 420 Throckmorton Street</p> <p>7</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: CLAY TAYLOR, ESQ.</p> <p>10 JOHN BONDS, ESQ.</p> <p>11 BRYAN ASSINK, ESQ.</p> <p>12</p> <p>13</p> <p>14 BAKER MCKENZIE</p> <p>15 Attorneys for Senior Employees</p> <p>16 1900 North Pearl Street</p> <p>17</p> <p>18 Dallas, Texas 75201</p> <p>19 BY: MICHELLE HARTMANN, ESQ.</p> <p>20 DEBRA DANDEREAU, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (Continued)</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 REMOTE APPEARANCES: (Continued)</p> <p>2</p> <p>3 WICK PHILLIPS</p> <p>4 Attorneys for NexPoint Real Estate</p> <p>5 Partners, NexPoint Real Estate Entities</p> <p>6 and NexBank</p> <p>7 100 Throckmorton Street</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: LAUREN DRAWHORN, ESQ.</p> <p>10</p> <p>11 ROSS &amp; SMITH</p> <p>12 Attorneys for Senior Employees, Scott</p> <p>13 Ellington, Isaac Leventon, Thomas Surgent,</p> <p>14 Frank Waterhouse</p> <p>15 700 N. Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 BY: FRANCES SMITH, ESQ.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 8</p> <p>1</p> <p>2 E X A M I N A T I O N S</p> <p>3 WITNESS PAGE</p> <p>4 JAMES SEERY 9</p> <p>5 By Mr. Draper 9</p> <p>6 By Mr. Taylor 75</p> <p>7 By Mr. Rukavina 165</p> <p>8 By Mr. Draper 217</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 EXHIBIT DESCRIPTION PAGE</p> <p>12 Exhibit 1 January 2021 Material 11</p> <p>13 Exhibit 2 Disclosure Statement 14</p> <p>14 Exhibit 3 Notice of Deposition 74</p> <p>15</p> <p>16 INFORMATION/PRODUCTION REQUESTS</p> <p>17 DESCRIPTION PAGE</p> <p>18 Subsidiary ledger showing note 22</p> <p>19 component versus hard asset 131</p> <p>20 component Amount of D&amp;O coverage for trustees</p> <p>21 Line item for D&amp;O insurance 133</p> <p>22</p> <p>23 MARKED FOR RULING</p> <p>24 PAGE LINE</p> <p>25 85 20</p>	<p style="text-align: right;">Page 9</p> <p>1</p> <p>2 COURT REPORTER: My name is</p> <p>3 Debra Stevens, court reporter for TSG</p> <p>4 Reporting and notary public of the</p> <p>5 State of New York. Due to the</p> <p>6 severity of the COVID-19 pandemic and</p> <p>7 following the practice of social</p> <p>8 distancing, I will not be in the same</p> <p>9 room with the witness but will report</p> <p>10 this deposition remotely and will</p> <p>11 swear the witness in remotely. If any</p> <p>12 party has any objection, please so</p> <p>13 state before we proceed.</p> <p>14 Whereupon,</p> <p>15 J A M E S S E E R Y,</p> <p>16 having been first duly sworn/affirmed,</p> <p>17 was examined and testified as follows:</p> <p>18 EXAMINATION BY</p> <p>19 MR. DRAPER:</p> <p>20 Q. Mr. Seery, my name is Douglas</p> <p>21 Draper, representing the Dugaboy Trust. I</p> <p>22 have series of questions today in</p> <p>23 connection with the 30(b) Notice that we</p> <p>24 filed. The first question I have for you,</p> <p>25 have you seen the Notice of Deposition</p>

Page 14

1 J. SEERY

2 the screen, please?

3 A. Page what?

4 Q. I think it is page 174.

5 A. Of the PDF or of the document?

6 Q. Of the disclosure statement that

7 was filed. It is up on the screen right

8 now.

9 COURT REPORTER: Do you intend

10 this as another exhibit for today's

11 deposition?

12 MR. DRAPER: We'll mark this

13 Exhibit 2.

14 (So marked for identification as

15 Seery Exhibit 2.)

16 Q. If you look to the recovery to

17 Class 8 creditors in the November 2020

18 disclosure statement was a recovery of

19 87.44 percent?

20 A. That actually says the percent

21 distribution to general unsecured

22 creditors was 87.44 percent. Yes.

23 Q. And in the new document that was

24 filed, given to us yesterday, the recovery

25 is 62.5 percent?

Page 16

1 J. SEERY

2 anybody else?

3 A. I said Mr. Doherty.

4 Q. In looking at the two elements,

5 and what I have asked you to look at is

6 the claims pool. If you look at the

7 November disclosure statement, if you look

8 down Class 8, unsecured claims?

9 A. Yes.

10 Q. You have 176,000 roughly?

11 A. Million.

12 Q. 176 million. I am sorry. And

13 the number in the new document is 313

14 million?

15 A. Correct.

16 Q. What accounts for the

17 difference?

18 A. An increase in claims.

19 Q. When did those increases occur?

20 Were they yesterday? A month ago? Two

21 months ago?

22 A. Over the last couple months.

23 Q. So in fact over the last couple

24 months you knew in fact that the recovery

25 in the November disclosure statement was

Page 15

1 J. SEERY

2 A. It says the percent distribution

3 to general unsecured creditors is

4 62.14 percent.

5 Q. Have you communicated the

6 reduced recovery to anybody prior to the

7 date -- to yesterday?

8 MR. MORRIS: Objection to the

9 form of the question.

10 A. I believe generally, yes. I

11 don't know if we have a specific number,

12 but generally yes.

13 Q. And would that be members of the

14 Creditors' Committee who you gave that

15 information to?

16 A. Yes.

17 Q. Did you give it to anybody other

18 than members of the Creditors' Committee?

19 A. Yes.

20 Q. Who?

21 A. HarbourVest.

22 Q. And when was that?

23 A. Within the last two months.

24 Q. You did not feel the need to

25 communicate the change in recovery to

Page 17

1 J. SEERY

2 not accurate?

3 A. Yes. We secretly disclosed it

4 to the Bankruptcy Court in open court

5 hearings.

6 Q. But you never did bother to

7 calculate the reduced recovery; you just

8 increased --

9 (Reporter interruption.)

10 Q. You just advised as to the

11 increased claims pool. Correct?

12 MR. MORRIS: Objection to the

13 form of the question.

14 A. I don't understand your

15 question.

16 Q. What I am trying to get at is,

17 as you increase the claims pool, the

18 recovery reduces. Correct?

19 A. No. That is not how a fraction

20 works.

21 Q. Well, if the denominator

22 increases, doesn't the recovery ultimately

23 decrease if --

24 A. No.

25 Q. -- if the numerator stays the

Page 26

1 J. SEERY

2 were amended without consideration a few

3 years ago. So, for our purposes we didn't

4 make the assumption, which I am sure will

5 happen, a fraudulent conveyance claim on

6 those notes, that a fraudulent conveyance

7 action would be brought. We just assumed

8 that we'd have to discount the notes

9 heavily to sell them because nobody would

10 respect the ability of the counterparties

11 to fairly pay.

12 Q. And the same discount was

13 applied in the liquidation analysis to

14 those notes?

15 A. Yes.

16 Q. Now --

17 A. The difference -- there would be

18 a difference, though, because they would

19 pay for a while because they wouldn't want

20 to accelerate them. So there would be

21 some collections on the notes for P and I.

22 Q. But in fact as of January you

23 have accelerated those notes?

24 A. Just one of them, I believe.

25 Q. Which note was that?

Page 28

1 J. SEERY

2 you whether they are included in the asset

3 portion of your \$257 million number, all

4 right? Mr. Morris didn't want me to go

5 into specific asset value, and I don't

6 intend to do that.

7 The first question I have for

8 you is, the equity in Trustway Highland

9 Holdings, is that included in the

10 \$257 million number?

11 A. There is no such entity.

12 Q. Then I will do it in a different

13 way. In connection with the sale of the

14 hard assets, what assets are included in

15 there specifically?

16 A. Off the top of my head -- it is

17 Trustway Holdings and all the value that

18 flows up from Trustway Holdings. It

19 flows up from Targa. It includes CCS

20 to the Debtor from CCS Medical. It

21 includes Cornerstone and all the value

22 that would flow from Cornerstone. It

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1 J. SEERY

2 A. NexPoint, I said. They

3 defaulted on the note and we accelerated

4 it.

5 Q. So there is no need to file a

6 fraudulent conveyance suit with respect to

7 that note. Correct, Mr. Seery?

8 MR. MORRIS: Objection to the

9 form of the question.

10 A. Disagree. Since it was likely

11 intentional fraud, there may be other

12 recoveries on it. But to collect on the

13 note, no.

14 Q. My question was with respect to

15 that note. Since you have accelerated it,

16 you don't need to deal with the issue of

17 when it's due?

18 MR. MORRIS: Objection to the

19 form of the question.

20 A. That wasn't your question. But

21 to that question, yes, I don't need to

22 deal with when it's due.

23 Q. Let me go over certain assets.

24 I am not going to ask you for the

25 valuation of them but I am going to ask

Page 29

1 J. SEERY

2 includes any other securities and all the

3 value that would flow from Cornerstone.

4 It includes HCLOF and all the value that

5 would flow up from HCLOF. It includes

6 from Korea.

7 There may be others off the top

8 of my head. I don't recall them. I don't

9 have a list in front of me.

10 Q. Now, with respect to those

11 assets, have you started the sale process

12 of those assets?

13 A. No. Well, each asset is

14 different. So, the answer is, with

15 respect to any securities, we do seek to

16 sell those regularly and we do seek to

17 monetize those assets where we can

18 depending on whether there is a

19 restriction or not and whether there is

20 liquidity in the market.

21 With respect to the PE assets or

22 the companies I described -- Targa, CCS,

23 Cornerstone, JHT -- we have not --

24 Trustway. We have not sought to sell

Page 38

1 J. SEERY

2 A. I don't recall the specific

3 limitation on the trust. But if there was

4 a reason to hold on to the asset, if there

5 is a limitation, we can seek an extension.

6 Q. Let me ask a question. With

7 respect to these businesses, the Debtor

8 merely owns an equity interest in them.

9 Correct?

10 A. Which business?

11 Q. The ones you have identified as

12 operating businesses earlier?

13 A. It depends on the business.

14 Q. Well, let me -- again, let's try

15 to be specific. With respect to SSP, it

16 was your position that you did not need to

17 get court approval for the sale. Correct?

18 A. That's correct.

19 Q. Which one of the operating

20 businesses that are here, that you have

21 identified, do you need court authority

22 for a sale?

23 MR. MORRIS: Objection to the

24 form of the question.

25 A. [REDACTED]

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1 J. SEERY

2 or determined the discount that has been

3 placed between the two, plan analysis

4 versus liquidation analysis?

5 MR. MORRIS: Objection to form

6 of the question.

7 A. To which document are you

8 referring?

9 Q. Both the June -- the January and

10 the November analysis has a different

11 estimated proceeds for monetization for

12 the plan analysis versus the liquidation

13 analysis. Do you see that?

14 A. Yes.

15 Q. And there is a note under there.

16 "Assumes Chapter 7 trustee will not be

17 able to achieve the same sales proceeds as

18 Claimant trustee."

19 A. I see that, yes.

20 Q. Do you see that note?

21 A. Yes.

22 Q. Who arrived at that discount?

23 A. I did.

24 Q. What percentage did you use?

25 A. Depended on the asset. Each one

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1 J. SEERY

2 different analysis that we'll undertake

3 with bankruptcy counsel to determine what

4 we would need depending on when it is

5 [REDACTED]

6 either under the code are or under the

7 plan.

8 Q. Is there anything that would

9 stop you from selling these businesses if

10 the Chapter 11 went on for a year or two

11 years?

12 MR. MORRIS: Objection to form

13 of the question.

14 A. Is there anything that would

15 stop me? We'd have to follow the

16 strictures of the code and the protocols,

17 but there would be no prohibition -- let

18 me finish, please.

19 There would be no prohibition

20 that I am aware of.

21 Q. Now, in connection with your

22 differential between the liquidation of

23 what I will call the operating businesses

24 under the liquidation analysis and the

25 plan analysis, who arrived at the discount

Page 41

1 J. SEERY

2 is different.

3 Q. Is the discount a function of

4 capability of a trustee versus your

5 capability, or is the discount a function

6 of timing?

7 MR. MORRIS: Objection to form.

8 A. It could be a combination.

9 Q. So, let's -- let me walk through

10 this. Your plan analysis has an

11 assumption that everything is sold by

12 December 2022. Correct?

13 A. Correct.

14 Q. And the valuations that you have

15 used here for the monetization assume a

16 sale between -- a sale prior to December

17 of 2022. Correct?

18 A. Sorry. I don't quite understand

19 your question.

20 Q. The 257 number, and then let's

21 take out the notes. Let's use the 210

22 number.

23 MR. MORRIS: Can we put the

24 document back on the screen, please?

25 Sorry, Douglas, to interrupt, but it

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1 J. SEERY  
 2 would be helpful.  
 3 MR. DRAPER: That is fine, John.  
 4 (Pause.)  
 5 MR. MORRIS: Thank you very  
 6 much.  
 7 Q. Mr. Seery, do you see the 257?  
 8 A. In the one from yesterday?  
 9 Q. Yes.  
 10 A. Second line, 257,941. Yes.  
 11 Q. That assumes a monetization of  
 12 all assets by December of 2022?  
 13 A. Correct.  
 14 Q. And so everything has been sold  
 15 by that time; correct?  
 16 A. Yes.  
 17 Q. So, what I am trying to get at  
 18 is, there is both the capability between  
 19 you and a trustee, and then the second  
 20 issue is timing. So, what discount was  
 21 put on for timing, Mr. Seery, between when  
 22 a trustee would sell it versus when you  
 23 would sell it?  
 24 MR. MORRIS: Objection.  
 25 Q. What is the percentage you

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1 J. SEERY  
 2 as capable as you are?  
 3 MR. MORRIS: Objection to the  
 4 form of the question.  
 5 A. I don't know.  
 6 Q. Is there anybody as capable as  
 7 you are?  
 8 MR. MORRIS: Objection to the  
 9 form of the question.  
 10 A. Certainly.  
 11 Q. And they could be hired.  
 12 Correct?  
 13 A. Perhaps. I don't know.  
 14 Q. And if you go back to the  
 15 November 2020 liquidation analysis versus  
 16 plan analysis, it is also the same note  
 17 about that a trustee would bring less, and  
 18 there is the same sort of discount between  
 19 the estimated proceeds under the plan and  
 20 under the liquidation analysis.  
 21 MR. MORRIS: If that is a  
 22 question, I object.  
 23 Q. Is that correct, Mr. Seery,  
 24 looking at the document?  
 25 A. There are discounts, yes.

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1 J. SEERY  
 2 applied?  
 3 A. Each of the assets is different.  
 4 Q. Is there a general discount that  
 5 you used?  
 6 A. Not a general discount, no. We  
 7 looked at each individual asset and went  
 8 through and made an assessment.  
 9 Q. Did you apply a discount for  
 10 your capability versus the capability of a  
 11 trustee?  
 12 A. No.  
 13 Q. So a trustee would be as capable  
 14 as you are in monetizing these assets?  
 15 MR. MORRIS: Objection to the  
 16 form of the question.  
 17 Q. Excuse me? The answer is?  
 18 A. The answer is maybe.  
 19 Q. Couldn't a trustee hire somebody  
 20 as capable as you are?  
 21 MR. MORRIS: Objection to the  
 22 form of the question.  
 23 A. Perhaps.  
 24 Q. Sir, that is a yes or no  
 25 question. Could the trustee hire somebody

Page 45

1 J. SEERY  
 2 Q. Again, the discounts are applied  
 3 for timing and capability?  
 4 A. Yes.  
 5 Q. Now, in looking at the November  
 6 plan analysis number of \$190 million and  
 7 the January number of \$257 million, what  
 8 accounts for the increase between the two  
 9 dates? What assets specifically?  
 10 A. There are a number of assets.  
 11 Firstly, the HCLOF assets are added.  
 12 Q. How much are those?  
 13 A. Approximately 22 and a half  
 14 million dollars.  
 15 Q. Okay.  
 16 A. Secondly, there is a significant  
 17 increase in the value of the assets.  
 18 assets over this time period.  
 19 Q. Which assets, Mr. Seery?  
 20 A. There are a number. They  
 21 include MGM stock, they include Trustway,  
 22 they include Targa.  
 23 Q. And what is the percentage  
 24 increase from November to January,  
 25 November of 2020 to January of 2021?

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1 J. SEERY

2 A. Do you mean what is the

3 percentage increase from 190 to 257?

4 Q. No. You just identified three

5 assets. MGM stock, we can go look at the

6 exchange and figure out what the price

7 increase is; correct?

8 A. No.

9 Q. Why not? Is the MGM stock

10 publicly traded?

11 A. Yes. It doesn't trade on --

12 Q. Excuse me?

13 A. It doesn't trade on an exchange.

14 Q. Is there a public market for the

15 MGM stock that we could calculate the

16 increase?

17 A. There is a semipublic market;

18 yes.

19 Q. So it is a number that is

20 readily available between the two dates?

21 A. It's available.

22 Q. Now, you identified Targa and

23 Trustway. Correct?

24 A. Yes.

25 Q. Those are not readily available

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1 J. SEERY

2 Q. [REDACTED]

3 [REDACTED]

4 valuation for those two businesses showed

5 a significant increase between November of

6 [REDACTED]

7 MR. MORRIS: Objection to form

8 of the question.

9 A. I didn't say that.

10 Q. I am trying to account for the

11 [REDACTED]

12 identified three assets. You identified

13 MGM stock, which has, I can guess, as you

14 [REDACTED]

15 Then you identified two others that the

16 valuation is based upon something Houlihan

17 Lokey provided you. Correct?

18 A. I gave you three examples. I

19 never said "readily." That is your word,

20 [REDACTED]

21 had a significant change in their

22 valuation.

23 Q. So let's now go back to the

24 question. There is an increase in value

25 [REDACTED]

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1 J. SEERY

2 markets; correct?

3 A. No.

4 Q. Those are operating businesses?

5 A. Correct.

6 Q. [REDACTED]

7 the November 2020 liquidation analysis?

8 A. We use a combination of the

9 value that we get from Houlihan Lokey for

10 [REDACTED]

11 [REDACTED]

12 Q. And the adjustment was up or

13 down?

14 A. When?

15 Q. [REDACTED]

16 [REDACTED]

17 adjusted it. Did you adjust it up or did

18 you adjust it down?

19 MR. MORRIS: Objection to form

20 of the question.

21 A. [REDACTED]

22 adjusted it down, and for January we

23 adjusted it down. I don't recall off the

24 [REDACTED]

25 [REDACTED]

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1 J. SEERY

2 of 2021, the magnitude being roughly 60

3 some odd million dollars. Correct?

4 A. Correct.

5 Q. We can account for \$22 million

6 [REDACTED]

7 MR. MORRIS: Objection to form.

8 A. Correct.

9 Q. [REDACTED]

10 settlement, so that leaves roughly

11 [REDACTED]

12 MR. MORRIS: Objection to the

13 form of the question if that is a

14 question. It is accounted for.

15 Q. What makes up that difference,

16 Mr. Seery?

17 A. A change in the plan value of

18 the assets.

19 Q. Okay. Which assets? Let's sort

20 [REDACTED]

21 A. There are numerous assets in the

22 plan formulation. I gave you three

23 examples of the operating businesses. The

24 securities, I believe, have increased in

25 [REDACTED]

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1 J. SEERY  
 2 for one. On the operating businesses, we  
 3 looked at each of them and made an  
 4 assessment based upon where the market is  
 5 [REDACTED]  
 6 have moved those valuations.  
 7 Q. Let me look at some numbers  
 8 again. In the liquidation analysis in  
 9 November of 2020, the liquidation value is  
 10 \$149 million. Correct?  
 11 A. Yes.  
 12 Q. And in the liquidation analysis  
 13 in January of 2021, you have \$191 million?  
 14 A. Yes.  
 15 Q. You see that number. So there  
 16 is \$51 million there, right?  
 17 A. No.  
 18 Q. What is the difference between  
 19 191 and -- sorry. My math may be a little  
 20 off. What is the difference between the  
 21 two numbers, Mr. Seery?  
 22 A. Your math is off.  
 23 Q. Sorry. It is 41 million?  
 24 A. Correct.  
 25 Q. \$22 million of that is the

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1 J. SEERY  
 2 of the question.  
 3 Q. Mr. Seery, yes or no?  
 4 A. I said no.  
 5 Q. What is that based on, then?  
 6 A. The person's ability to assess  
 7 the market and timing.  
 8 Q. Okay. And again, couldn't a  
 9 trustee hire somebody as capable as you to  
 10 both, A, assess the market and, B, make a  
 11 determination as to when to sell?  
 12 MR. MORRIS: Objection to form  
 13 of the question.  
 14 A. I suppose a trustee could.  
 15 Q. And there are better people or  
 16 people equally or better than you at  
 17 assessing a market. Correct?  
 18 A. Yes.  
 19 MR. MORRIS: Objection to form  
 20 of the question.  
 21 Q. So, again, let's go back to  
 22 that. We have accounted for, out of  
 23 \$41 million where the liquidation analysis  
 24 increases between the two dates,  
 25 \$22 million of it. That leaves

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1 J. SEERY  
 2 HarbourVest settlement, right?  
 3 A. I believe that's correct.  
 4 Q. Is that fair, Mr. Seery?  
 5 A. I believe that is correct, yes.  
 6 Q. And part of that differential  
 7 are publicly traded or ascertainable  
 8 securities. Correct?  
 9 A. Yes.  
 10 Q. And basically you can get, or  
 11 under the plan analysis or trustee  
 12 analysis, if it is a marketable security  
 13 or where there is a market, the  
 14 liquidation number should be the same for  
 15 both. Is that fair?  
 16 A. No.  
 17 Q. And why not?  
 18 A. We might have a different price  
 19 target for a particular security than the  
 20 current trading value.  
 21 Q. I understand that, but I mean  
 22 that is based upon the capability of the  
 23 person making the decision as to when to  
 24 sell. Correct?  
 25 MR. MORRIS: Objection to form

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1 J. SEERY  
 2 \$18 million. How much of that is publicly  
 3 traded or ascertainable assets versus  
 4 operating businesses?  
 5 A. I don't know off the top of my  
 6 head the percentages.  
 7 Q. All right. The same question  
 8 for the plan analysis where you have the  
 9 differential between the November number  
 10 and the January number. How much of it is  
 11 marketable securities versus an operating  
 12 business?  
 13 A. I don't recall off the top of my  
 14 head.  
 15 MR. DRAPER: Let me take a  
 16 few-minute break. Can we take a  
 17 ten-minute break here?  
 18 THE WITNESS: Sure.  
 19 (Recess.)  
 20 BY MR. DRAPER:  
 21 Q. Mr. Seery, what I am going to  
 22 show you and what I would ask you to look  
 23 at is in the note E, in the statement of  
 24 assumptions for the November 2020  
 25 disclosure statement. It discusses fixed

Sale of Assets of Affiliates or Controlled Entities

<b>Asset</b>	<b>Sales Price</b>
Structural Steel Products	\$50 million
Life Settlements	\$35 million
OmniMax	\$50 million
Targa	\$37 million

- These assets were sold over the contemporaneous objections of James Dondero, who was the Portfolio Manager and key-man on the funds.
- Mr. Seery admitted<sup>1</sup> that he must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Protocols for the sale of major assets of the estate. We believe that a competitive bid process and court approval should have been required for the sale of each of these assets (as was done for the sale of the building at 2817 Maple Ave. [a \$9 million asset] and the sale of the interest in PetroCap [a \$3 million asset]).

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<sup>1</sup> See Mr. Seery's Jan. 29, 2021 deposition testimony, Appendix p. A-20.

20 Largest Unsecured Creditors

<b>Name of Claimant</b>	<b>Allowed Class 8</b>	<b>Allowed Class 9</b>
Redeemer Committee of the Highland Crusader Fund	\$136,696,610.00	
UBS AG, London Branch and UBS Securities LLC	\$65,000,000.00	\$60,000,000
HarbourVest entities	\$45,000,000.00	\$35,000,000
Acis Capital Management, L.P. and Acis Capital Management GP, LLC	\$23,000,000.00	
CLO Holdco Ltd	\$11,340,751.26	
Patrick Daugherty	\$8,250,000.00	\$2,750,000 (+\$750,000 cash payment on Effective Date of Plan)
Todd Travers (Claim based on unpaid bonus due for Feb 2009)	\$2,618,480.48	
McKool Smith PC	\$2,163,976.00	
Davis Deadman (Claim based on unpaid bonus due for Feb 2009)	\$1,749,836.44	
Jack Yang (Claim based on unpaid bonus due for Feb 2009)	\$1,731,813.00	
Paul Kauffman (Claim based on unpaid bonus due for Feb 2009)	\$1,715,369.73	
Kurtis Plumer (Claim based on unpaid bonus due for Feb 2009)	\$1,470,219.80	
Foley Gardere	\$1,446,136.66	
DLA Piper	\$1,318,730.36	
Brad Borud (Claim based on unpaid bonus due for Feb 2009)	\$1,252,250.00	
Stinson LLP (successor to Lackey Hershman LLP)	\$895,714.90	
Meta-E Discovery LLC	\$779,969.87	
Andrews Kurth LLP	\$677,075.65	
Markit WSO Corp	\$572,874.53	
Duff & Phelps, LLC	\$449,285.00	
Lynn Pinker Cox Hurst	\$436,538.06	
Joshua and Jennifer Terry	\$425,000.00	
Joshua Terry	\$355,000.00	
CPCM LLC (bought claims of certain former HCMLP employees)	Several million	
<b>TOTAL:</b>	<b>\$309,345,631.74</b>	<b>\$95,000,000</b>

Timeline of Relevant Events

Date	Description
10/29/2019	UCC appointed; members agree to fiduciary duties and not sell claims.
9/23/2020	Acis 9019 filed
9/23/2020	Redeemer 9019 filed
10/28/2020	Redeemer settlement approved
10/28/2020	Acis settlement approved
12/24/2020	HarbourVest 9019 filed
1/14/2021	Motion to appoint examiner filed
1/21/2021	HarbourVest settlement approved; transferred its interest in HCLOF to HCMLP assignee, valued at \$22 million per Seery
1/28/2021	Debtor discloses that it has reached an agreement in principle with UBS
2/3/2021	Failure to comply with Rule 2015.3 raised
2/24/2021	Plan confirmed
3/9/2021	Farallon Cap. Mgmt. forms "Muck Holdings LLC" in Delaware
3/15/2021	Debtor files Jan. '21 monthly operating report indicating assets of \$364 million, liabilities of \$335 million ( <b>inclusive of \$267,607,000 in Class 8 claims, but exclusive of any Class 9 claims</b> ), the last publicly filed summary of the Debtor's assets. The MOR states that no Class 9 distributions are anticipated at this time and Class 9 recoveries are not expected.
3/31/2021	UBS files friendly suit against HCMLP under seal
4/8/2021	Stonehill Cap. Mgmt. forms "Jessup Holdings LLC" in Delaware
4/15/2021	UBS 9019 filed
4/16/2021	Notice of Transfer of Claim - Acis to Muck (Farallon Capital)
4/29/2021	Motion to Compel Compliance with Rule 2015.3 Filed
4/30/2021	Notice of Transfer of Claim - Redeemer to Jessup (Stonehill Capital)
4/30/2021	Notice of Transfer of Claim - HarbourVest to Muck (Farallon Capital)
4/30/2021	Sale of Redeemer claim to Jessup (Stonehill Capital) "consummated"
5/27/2021	UBS settlement approved; included \$18.5 million in cash from Multi-Strat
6/14/2021	UBS dismisses appeal of Redeemer award
8/9/2021	Notice of Transfer of Claim - UBS to Jessup (Stonehill Capital)
8/9/2021	Notice of Transfer of Claim - UBS to Muck (Farallon Capital)

Critical unknown dates and information:

- The date on which Muck entered into agreements with HarbourVest and Acis to acquire their claims and what negative and affirmative covenants those agreements contained.
- The date on which Jessup entered into an agreement with the Redeemer Committee and the Crusader Fund to acquire their claim and what negative and affirmative covenants the agreement contained.
- The date on which the sales actually closed versus the date on which notice of the transfer was filed (i.e., did UCC members continue to serve on the committee after they had sold their claims).

Debtor's October 15, 2020 Liquidation Analysis [Doc. 1173-1]

	<b>Plan Analysis</b>	<b>Liquidation Analysis</b>
Estimated cash on hand at 12/31/2020	\$26,496	\$26,496
Estimated proceeds from monetization of assets [1][2]	198,662	154,618
Estimated expenses through final distribution [1][3]	(29,864)	(33,804)
<b>Total estimated \$ available for distribution</b>	<b>195,294</b>	<b>147,309</b>
Less: Claims paid in full		
Administrative claims [4]	(10,533)	(10,533)
Priority Tax/Settled Amount [10]	(1,237)	(1,237)
Class 1 – Jefferies Secured Claim	-	-
Class 2 – Frontier Secured Claim [5]	(5,560)	(5,560)
Class 3 – Priority non-tax claims [10]	(16)	(16)
Class 4 – Retained employee claims	-	-
Class 5 – Convenience claims [6][10]	(13,455)	-
Class 6 – Unpaid employee claims [7]	(2,955)	-
Subtotal	(33,756)	(17,346)
Estimated amount remaining for distribution to general unsecured claims	161,538	129,962
Class 5 – Convenience claims [8]	-	17,940
Class 6 – Unpaid employee claims	-	3,940
Class 7 – General unsecured claims [9]	174,609	174,609
Subtotal	174,609	196,489
% Distribution to general unsecured claims	92.51%	66.14%
Estimated amount remaining for distribution	-	-
Class 8 – Subordinated claims	<i>no distribution</i>	<i>no distribution</i>
Class 9 – Class B/C limited partnership interests	<i>no distribution</i>	<i>no distribution</i>
Class 10 – Class A limited partnership interests	<i>no distribution</i>	<i>no distribution</i>

Notable notations/disclosures in the Oct. 15, 2020 liquidation analysis include:

- Note [9]: General unsecured claims estimated using \$0 allowed claims for HarbourVest and UBS. Ultimately, those two creditors were awarded \$105 million of general unsecured claims and \$95 million of subordinated claims.

Updated Liquidation Analysis (Feb. 1, 2021)<sup>2</sup>

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020 [sic]	\$24,290	\$24,290
Estimated proceeds from monetization of assets [1][2]	257,941	191,946
Estimated expenses through final distribution [1][3]	(59,573)	(41,488)
<b>Total estimated \$ available for distribution</b>	<b>222,658</b>	<b>174,178</b>
Less: Claims paid in full		
Unclassified [4]	(1,080)	(1,080)
Administrative claims [5]	(10,574)	(10,574)
Class 1 – Jefferies Secured Claim	-	-
Class 2 – Frontier Secured Claim [6]	(5,781)	(5,781)
Class 3 – Other Secured Claims	(62)	(62)
Class 4 – Priority non-tax claims	(16)	(16)
Class 5 – Retained employee claims	-	-
Class 6 – PTO Claims [5]	-	-
Class 7 – Convenience claims [7][8]	(10,280)	-
<b>Subtotal</b>	<b>(27,793)</b>	<b>(17,514)</b>
Estimated amount remaining for distribution to general unsecured claims	194,865	157,235
% Distribution to Class 7 (Class 7 claims including in Class 8 in Liquidation scenario)	85.00%	0.00%
Class 8 – General unsecured claims [8] [10]	273,219	286,100
Subtotal	273,219	286,100
% Distribution to general unsecured claims	71.32%	54.96%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated claims	<i>no distribution</i>	<i>no distribution</i>
Class 10 – Class B/C limited partnership interests	<i>no distribution</i>	<i>no distribution</i>
Class 11 – Class A limited partnership interests	<i>no distribution</i>	<i>no distribution</i>

Notable notations/disclosures in the Feb. 1, 2021 liquidation analysis include:

- claim amounts in Class 8 assume \$0 for IFA and HM, \$50.0 million for UBS and \$45 million HV.
- Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets

<sup>2</sup> Doc. 1895.

Summary of Debtor’s January 31, 2021 Monthly Operating Report<sup>3</sup>

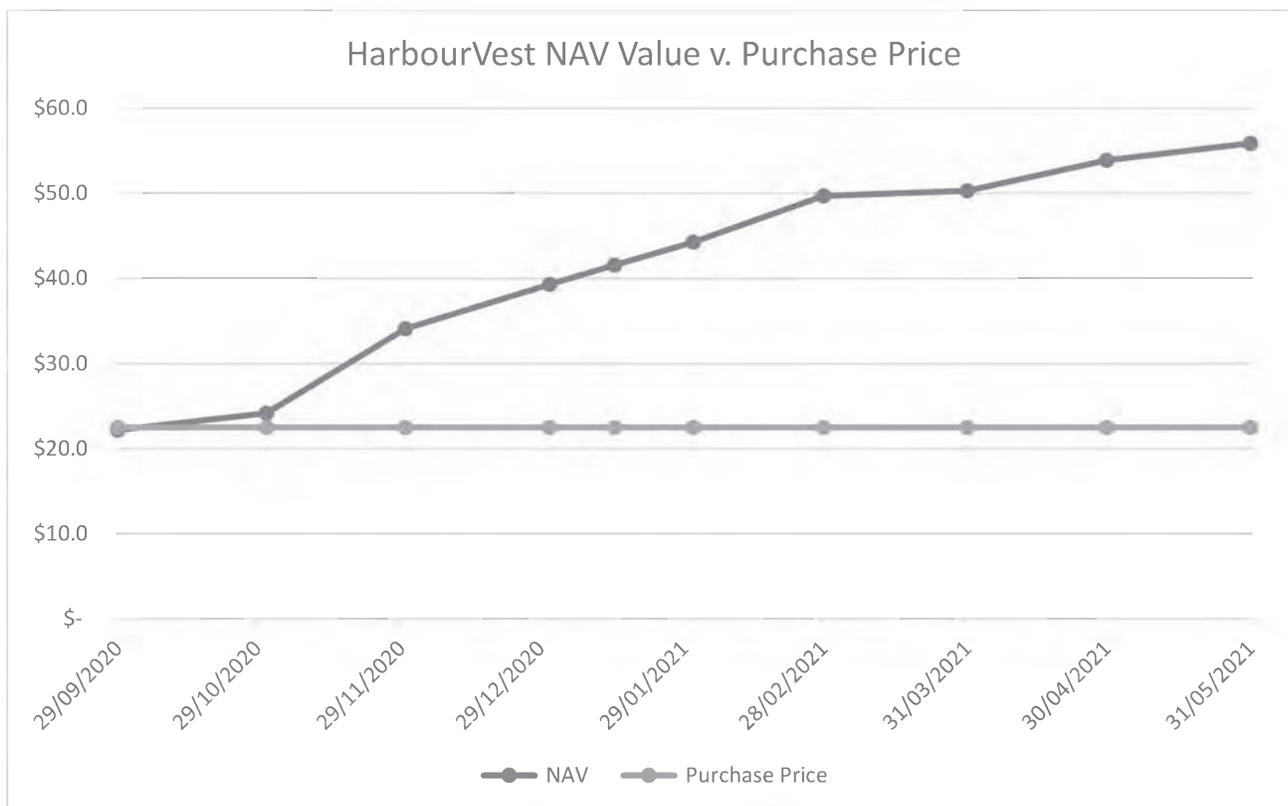
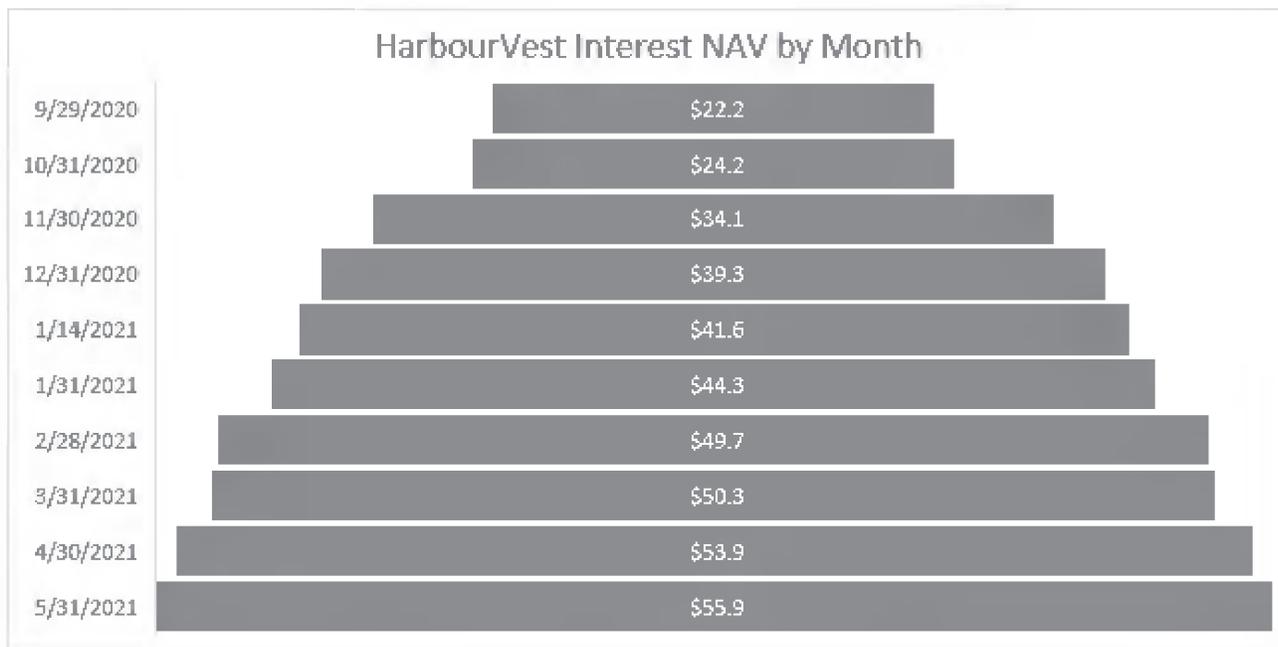
	10/15/2019	12/31/2020	1/31/2021
<b>Assets</b>			
Cash and cash equivalents	\$2,529,000	\$12,651,000	\$10,651,000
Investments, at fair value	\$232,620,000	\$109,211,000	\$142,976,000
Equity method investees	\$161,819,000	\$103,174,000	\$105,293,000
mgmt and incentive fee receivable	\$2,579,000	\$2,461,000	\$2,857,000
fixed assets, net	\$3,754,000	\$2,594,000	\$2,518,000
due from affiliates	\$151,901,000	\$152,449,000	\$152,538,000
reserve against notices receivable		(\$61,039,000)	(\$61,167,000)
other assets	\$11,311,000	\$8,258,000	\$8,651,000
<b>Total Assets</b>	<b>\$566,513,000</b>	<b>\$329,759,000</b>	<b>\$364,317,000</b>
<b>Liabilities and Partners' Capital</b>			
pre-petition accounts payable	\$1,176,000	\$1,077,000	\$1,077,000
post-petition accounts payable		\$900,000	\$3,010,000
Secured debt			
Frontier	\$5,195,000	\$5,195,000	\$5,195,000
Jefferies	\$30,328,000	\$0	\$0
Accrued expenses and other liabilities	\$59,203,000	\$60,446,000	\$49,445,000
Accrued re-organization related fees		\$5,795,000	\$8,944,000
Class 8 general unsecured claims	\$73,997,000	\$73,997,000	\$267,607,000
Partners' Capital	\$396,614,000	\$182,347,000	\$29,039,000
<b>Total liabilities and partners' capital</b>	<b>\$566,513,000</b>	<b>\$329,757,000</b>	<b>\$364,317,000</b>

Notable notations/disclosures in the Jan. 31, 2021 MOR include:

- Class 8 claims totaled \$267 million, a jump from \$74 million in the prior month’s MOR
- The MOR stated that no Class 9 recovery was expected, which was based on the then existing \$267 million in Class 8 Claims.
- Currently, there are roughly \$310 million of Allowed Class 8 Claims.

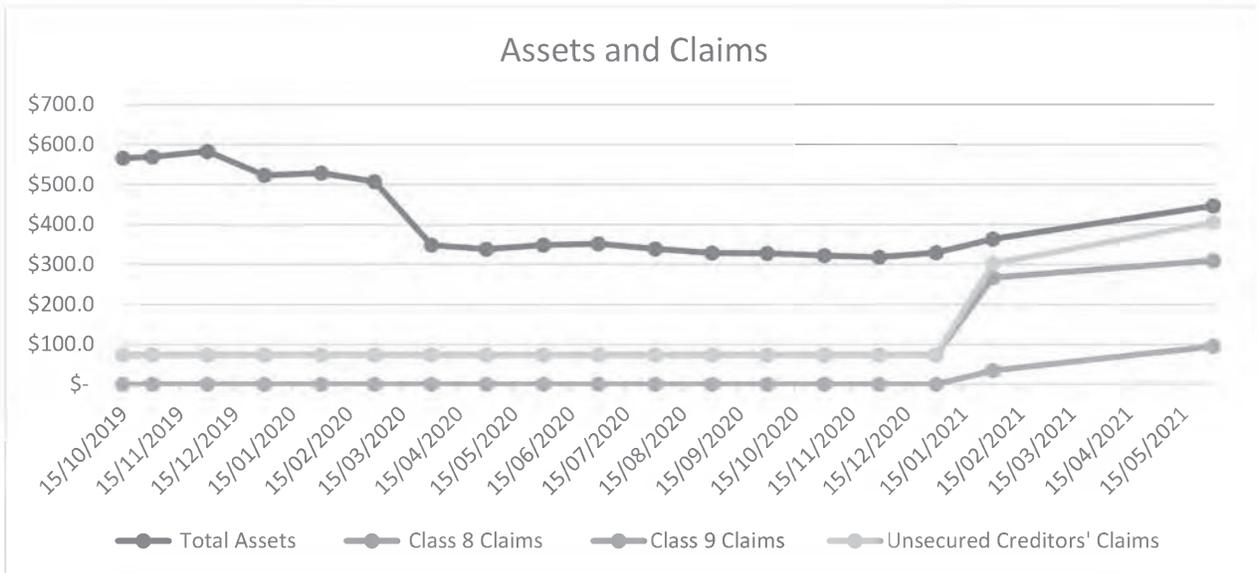
<sup>3</sup> [Doc. 2030] Filed on March 15, 2021, the last publicly disclosed information regarding the value of assets in the estate.

Value of HarbourVest Claim



Estate Value as of August 1, 2021 (in millions)<sup>4</sup>

Asset	Low	High
Cash as of 6/30/2021	\$17.9	\$17.9
Targa Sale	\$37.0	\$37.0
8/1 CLO Flows	\$10.0	\$10.0
Uchi Bldg. Sale	\$9.0	\$9.0
Siepe Sale	\$3.5	\$3.5
PetroCap Sale	\$3.2	\$3.2
HarbourVest trapped cash	\$25.0	\$25.0
<b>Total Cash</b>	<b>\$105.6</b>	<b>\$105.6</b>
Trussway	\$180.0	\$180.0
Cornerstone (125mm; 16%)	\$18.0	\$18.0
HarbourVest CLOs	\$40.0	\$40.0
CCS Medical (in CLOs and Highland Restoration)	\$20.0	\$20.0
MGM (direct ownership)	\$32.0	\$32.0
Multi-Strat (45% of 100mm; MGM; CCS)	\$45.0	\$45.0
Korea Fund	\$18.0	\$18.0
Celtic (in Credit-Strat)	\$12.0	\$40.0
SE Multifamily	\$0.0	\$20.0
Affiliate Notes	\$0.0	\$70.0
Other	\$2.0	\$10.0
<b>TOTAL</b>	<b>\$472.6</b>	<b>\$598.6</b>



<sup>4</sup> Values are based upon historical knowledge of the Debtor’s assets (including cross-holdings) and publicly filed information.

HarbourVest Motion to Approve Settlement [Doc. 1625]

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

	§	
In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (“Highland” or the “Debtor”), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement (the “Settlement Agreement”),<sup>2</sup> a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion (“Morris Dec.”), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”). In support of this Motion, the Debtor represents as follows:

#### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9019 of the Bankruptcy Rules.

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

## RELEVANT BACKGROUND

### A. Procedural Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the official committee of unsecured creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s case to this Court [Docket No. 186].<sup>3</sup>

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor’s general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor’s chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

**B. Overview of HarbourVest's Claims**

10. HarbourVest's claims against the Debtor's estate arise from its \$80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of \$300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.<sup>4</sup>

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<sup>4</sup> Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

**C. Summary of HarbourVest's Factual Allegations**

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately \$8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the “Transfers”), on January 24, 2018, Terry moved for a temporary restraining order (the “TRO”) from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the “Acis Bankruptcy Case”). The Bankruptcy Court overruled the Debtor’s objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the “Acis Trustee”). A long sequence of events subsequently transpired, all of which relate to HarbourVest’s claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF’s request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the “Preliminary Injunction”).
- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee’s attempts to confirm a plan or resolve the Acis Bankruptcy.
- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the “evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value.”
- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest’s involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest’s managing director, Michael Pugatch, on November 17, 2018.
- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

**D. The Parties’ Pleadings and Positions Concerning HarbourVest’s Proofs of Claim**

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor’s claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the “Proofs of Claim”). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor’s employees, including “financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF.” *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted “any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to” the Operative Documents “and any and all legal and equitable claims or causes of action relating to the forgoing harm.” *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest’s Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the “Claim Objection”).

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the “Fraud Claims”), U.S. State and Federal Securities Law Claims (the “Securities Claims”), violations of the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the “HarbourVest Claims”).

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than \$300 million (based largely on a theory of treble damages).

#### **E. Settlement Discussions**

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

**F. Summary of Settlement Terms**

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;<sup>5</sup>
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of \$45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

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<sup>5</sup> The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately \$22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

### **BASIS FOR RELIEF REQUESTED**

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. See *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. See *In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” See *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court’s TRO that restricted HCLOF’s ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor’s estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's \$300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

#### **NO PRIOR REQUEST**

41. No previous request for the relief sought herein has been made to this, or any other, Court.

#### **NOTICE**

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

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*/s/ Zachery Z. Annable*

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UBS Settlement [Doc. 2200-1]

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**Exhibit 1**  
**Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat,” and together with its general partner and its direct and indirect wholly-owned subsidiaries, the “MSCF Parties”), (iii) Strand Advisors, Inc. (“Strand”), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, “UBS”).

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO Fund, the “Funds”) related to a securitization transaction (the “Knox Agreement”);

**WHEREAS**, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

**WHEREAS**, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the “State Court”) against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the “2009 Action”);

**WHEREAS**, UBS’s lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. (“HFP”), Highland Credit Strategies Master Funds, L.P. (“Credit-Strat”), Highland Crusader Offshore Partners, L.P. (“Crusader”), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

**WHEREAS**, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”);

**WHEREAS**, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the “State Court Action”), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

**WHEREAS**, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

**EXECUTION VERSION**

**WHEREAS**, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

**WHEREAS**, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of \$105,647,679 (the "Transferred Assets") and purported face value of over \$300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

**WHEREAS**, Sentinel treated the Transferred Assets as payment for a \$25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

**WHEREAS**, the Insurance Policy purports to provide coverage to the Funds for up to \$100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

**WHEREAS**, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

**WHEREAS**, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

**WHEREAS**, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

**WHEREAS**, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

**WHEREAS**, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

**WHEREAS**, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

**WHEREAS**, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately \$32,823,423.50 (the "Sentinel Redemption");

**WHEREAS**, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of \$1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

**WHEREAS**, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

## EXECUTION VERSION

fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

**WHEREAS**, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

**WHEREAS**, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

**WHEREAS**, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

**WHEREAS**, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for \$1,039,957,799.40;

**WHEREAS**, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

**WHEREAS**, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

**WHEREAS**, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

**WHEREAS**, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

## EXECUTION VERSION

**WHEREAS**, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

**WHEREAS**, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of \$94,761,076 [Docket No. 1518];

**WHEREAS**, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

**WHEREAS**, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

**WHEREAS**, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

**WHEREAS**, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

**1. Settlement of Claims.** In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;<sup>1</sup> and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

**EXECUTION VERSION**

(b) Multi-Strat will pay UBS the sum of \$18,500,000 (the “Multi-Strat Payment”) as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the “HCMLP Excluded Employees”); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor’s actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities’ holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

## EXECUTION VERSION

MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of \$3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

## EXECUTION VERSION

(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

### 2. Definitions.

(a) “Agreement Effective Date” shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) “HCMLP Parties” shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) “Order Date” shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) “UBS Parties” shall mean UBS Securities LLC and UBS AG London Branch.

### 3. Releases.

(a) **UBS Releases.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys’ fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

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or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the “UBS Released Claims”), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities’ past, present or future subsidiaries and feeders funds (the “UBS Unrelated Investments”); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

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their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

**EXECUTION VERSION**

attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

**6. Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

**7. Representations and Warranties.**

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

**EXECUTION VERSION**

**8. No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

**9. Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

**10. Notice.** Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

**HCMLP Parties or the MSCF Parties**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Telephone No.: 972-628-4100  
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
E-mail: jpomerantz@pszjlaw.com

**UBS**

UBS Securities LLC  
UBS AG London Branch  
Attention: Elizabeth Kozlowski, Executive Director and Counsel  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-9007  
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC  
UBS AG London Branch  
Attention: John Lantz, Executive Director  
1285 Avenue of the Americas  
New York, NY 10019

EXECUTION VERSION

Telephone No.: 212-713-1371  
E-mail: john.lantz@ubs.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP  
Attention: Andrew Clubok  
Sarah Tomkowiak  
555 Eleventh Street, NW, Suite 1000  
Washington, D.C. 20004-1304  
Telephone No.: 202-637-3323  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

**11. Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

**13. No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

**14. Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

**15. Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

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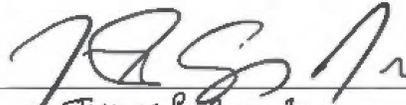
Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

**16. Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By:   
Name: James P. Seery Jr.  
Its: Authorized Signatory

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)**

By:   
Name: James P. Seery Jr.  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.**

By:   
Name: James P. Seery Jr.  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.**

By:   
Name: James P. Seery Jr.  
Its: Authorized Signatory

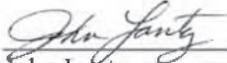
**STRAND ADVISORS, INC.**

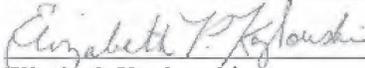
By:   
Name: James P. Seery Jr.  
Its: Authorized Signatory

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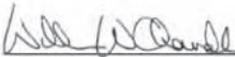
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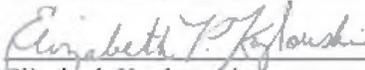
**UBS SECURITIES LLC**

By:   
Name: John Lantz  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

**UBS AG LONDON BRANCH**

By:   
Name: William Chandler  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

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APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled “Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets” (the “Tax Memo”), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the \$105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero’s relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor’s settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

## Hellman & Friedman Seeded Farallon Capital Management

### OUR FOUNDER

[RETURN TO ABOUT \(/ABOUT/\)](#)

## Warren Hellman: One of the good guys

**Warren Hellman was a devoted family man**, highly successful businessman, active philanthropist, dedicated musician, arts patron, endurance athlete and all-around good guy. Born in New York City in 1934, he grew up in the Bay Area, graduating from the University of California at Berkeley. After serving in the U.S. Army and attending Harvard Business School, Warren began his finance career at Lehman Brothers, becoming the youngest partner in the firm's history at age 26 and subsequently serving as President. After a distinguished career on Wall Street, Warren moved back west and co-founded Hellman & Friedman, building it into one of the industry's leading private equity firms.

**Warren deeply believed in the power of people** to accomplish incredible things and used his success to improve and enrich the lives of countless people. Throughout his career, Warren helped found or seed many successful businesses including Matrix Partners, Jordan Management Company, Farallon Capital Management and Hall Capital Partners.

**Within the community**, Warren and his family were generous supporters of dozens of organizations and causes in the arts, public education, civic life, and public health, including creating and running the San Francisco Free Clinic. Later in life, Warren became an accomplished 5-string banjo player and found great joy in sharing the love of music with others. In true form, he made something larger of this avocation to benefit others by founding the Hardly Strictly Bluegrass Festival, an annual three-day, free music festival that draws hundreds of thousands of people together from around the Bay Area.

**An accomplished endurance athlete**, Warren regularly completed 100-mile runs, horseback rides and combinations of the two. He also was an avid skier and national caliber master ski racer and served as president of the U.S. Ski Team in the late 1970s, and is credited with helping revitalize the Sugar Bowl ski resort in the California Sierras.

**In short**, Warren Hellman embodied the ideal of living life to the fullest. He had an active mind and body, and a huge heart. We are lucky to call him our founder. [Read more about Warren.](https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf) (https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf)



SFChronkle/SFGate/Liz Hafalla



Robert Holmgren



no caption

<https://hf.com/warren-hellman/>

1/2

## Hellman & Friedman Owned a Portion of Grosvenor until 2020



### Grosvenor Capital Management

In 2007, H&F invested in Grosvenor, one of the world's largest and most diversified independent alternative asset management firms. The Company offers comprehensive public and private markets solutions and a broad suite of investment and advisory choices that span hedge funds, private equity, and various credit and specialty strategies. Grosvenor specializes in developing customized investment programs tailored to each client's specific investment goals.

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**SECTOR**

Financial Services

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**STATUS**

Past

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CORNER OFFICE



Julie Segal

## GCM Grosvenor to Go Public

The \$57 billion alternatives manager will become a public company after merging with a SPAC backed by Cantor Fitzgerald.

August 03, 2020



Chicago, IL. (Tim Boyle/Bloomberg)

In a sign of the times, GCM Grosvenor will become a public company through a SPAC.

The Chicago-based alternative investments firm is planning to go public by merging with a special purpose acquisition company in a deal valued at \$2 billion. The 50-year-old firm has \$57 billion in assets in private equity, infrastructure, real estate, credit, and absolute return investments.

“We have long valued having external shareholders and we wanted to preserve the accountability and focus that comes with that,” Michael Sacks, GCM Grosvenor’s chairman and CEO, said in a statement.

GCM Grosvenor will combine with CF Finance Special Acquisition Corp, a SPAC backed by Cantor Fitzgerald, according to an announcement from both companies on Monday. After the company goes public, Sacks will continue to lead GCM Grosvenor, which is owned by management and Hellman & Friedman, a private equity firm. Hellman & Friedman, which has owned a minority stake of the Chicago asset manager since 2007, will sell its equity as

Farallon was a Significant Borrower for Lehman

Case Study – Large Loan Origination

Debt origination for an affiliate of Simon Property Group Inc. and Farallon Capital Management

Date	June 2007
Asset Class	Retail
Asset Size	1,808,506 Sq. Ft.
Sponsor	Simon Property Group Inc. / Farallon Capital Management
Transaction Type	Refinance
Total Debt Amount	Lehman Brothers: \$121 million JP Morgan: \$200 million



Transaction Overview

- ◆ In June 2007, Lehman Brothers co-originated a loan in the aggregate amount of \$321 million (Lehman portion: \$121 million) with JP Morgan to a special purpose affiliate of a joint venture between Simon Property Group Inc (“Simon”) and Farallon Capital Management (“Farallon”) secured by the shopping center known as Gurnee Mills Mall (the “Property”) located in Gurnee, IL .
- ◆ The Property consists of a one-story, 200 store discount mega-mall comprised of 1,808,506 square feet anchored by Burlington Coat Factory, Marshalls, Bed Bath & Beyond and Kohls among other national retailers. Built in 1991, the Property underwent a \$5 million interior renovation in addition to a \$71 million redevelopment between 2004 and 2005. As of March 2007, the Property had a in-line occupancy of 99.5%.

Lehman Brothers Role

- ◆ Simon and Farallon comprised the sponsorship which eventually merged with The Mills Corporation in early 2007 for \$25.25 per common share in cash. The total value of the transaction was approximately \$1.64 billion for all of the outstanding common stock, and approximately \$7.9 billion including assumed debt and preferred equity.
- ◆ Lehman and JP Morgan subsequently co-originated \$321 million loan at 79.2% LTV based on an appraisal completed in March by Cushman & Wakefield. The Loan was used to refinance the indebtedness secured by the Property.

Sponsorship Overview

- ◆ The Mills Corporation, based in Chevy Chase MD is a developer owner and manager of a diversified portfolio of retail destinations including regional shopping malls and entertainment centers. They currently own 38 properties in the United States totaling 47 million square feet.

Mr. Seery Represented Stonehill While at Sidley

James P. Seery, Jr.  
John G. Hutchinson  
John J. Lavelle  
Martin B. Jackson  
Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
(212) 839-5300 (tel)  
(212) 839-5599 (fax)

*Attorneys for the Steering Group*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
In re:	: Chapter 11
	:
BLOCKBUSTER INC., <i>et al.</i> ,	: Case No. 10-14997 (BRL)
	:
Debtors.	: (Jointly Administered)
	:
-----	X

**THE BACKSTOP LENDERS' OBJECTION TO THE MOTION OF LYME REGIS TO ABANDON CERTAIN CAUSES OF ACTION OR, IN THE ALTERNATIVE, TO GRANT STANDING TO LYME REGIS TO PURSUE CLAIMS ON BEHALF OF THE ESTATE**

1. The Steering Group of Senior Secured Noteholders who are Backstop Lenders -- Icahn Capital LP, Monarch Alternative Capital LP, Owl Creek Asset Management, L.P., Stonehill Capital Management LLC, and Värde Partners, Inc. (collectively, the "Backstop Lenders") -- hereby file this objection (the "Objection") to the Motion of Lyme Regis Partners, LLC ("Lyme Regis") to Abandon Certain Causes of Action or, in the Alternative, to Grant Standing to Lyme Regis to Pursue Claims on Behalf of the Estate (the "Motion") [Docket No. 593].

Stonehill Founder (Motulsky) and Grosvenor's G.C. (Nesler) Were Law School Classmates



Over 25 years earlier, here is a group at a party. From the left, Bob Zinn, Dave Lowenthal, Rory Little, Joe Nesler, Jon Polonsky (in front of Joe), John Motulsky and Mark Windfeld-Hansen (behind bottle!) Motulsky circulated this photo at the reunion. Thanks John!



Joseph H. Nesler (He/Him)  
General Counsel

More

Message



Joseph H. Nesler (He/Him) ·



Yale Law School

3rd

General Counsel

Winnetka, Illinois, United States ·

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Message

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Open to work

Chief Compliance Officer and General Counsel roles  
See all details

## About

I have over 38 years of experience representing participants in the investment management industry with respect to a wide range of legal and regulatory matters, including SEC, DOL, FINRA, and NFA regulations and examinations. ... see more

## Activity

522 followers

Posts Joseph H. created, shared, or commented on in the last 90 days are displayed here.

<https://www.linkedin.com/in/josephnesler/>



**Joseph H. Nesler (He/Him)**  
General Counsel

More

Message

### Experience

#### General Counsel

Dalpha Capital Management, LLC  
Aug 2020 – Jul 2021 · 1 yr



#### Of Counsel

Winston & Strawn LLP  
Sep 2018 – Jul 2020 · 1 yr 11 mos  
Greater Chicago Area

#### Principal

The Law Offices of Joseph H. Nesler, LLC  
Feb 2016 – Aug 2018 · 2 yrs 7 mos



#### Grosvenor Capital Management, L.P.

11 yrs 9 mos

#### Independent Consultant to Grosvenor Capital Management, L.P.

May 2015 – Dec 2015 · 8 mos  
Chicago, Illinois

#### General Counsel

Apr 2004 – Apr 2015 · 11 yrs 1 mo  
Chicago, Illinois

Managing Director, General Counsel and Chief Compliance Officer (April 2004 – April 2015)

Investor Communication to Highland Crusader Funds Stakeholders



Alvarez & Marsal  
Management, LLC 2029 Cer  
Park East Suite 206C  
Angeles, CA 9

July 6, 2021

**Re: Update & Notice of Distribution**

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of \$137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of \$50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal") in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for \$78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction (\$78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately \$9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of \$87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021**. If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at [CRFInvestor@alvarezandmarsal.com](mailto:CRFInvestor@alvarezandmarsal.com) and [AIFS-IS\\_Crusader@seic.com](mailto:AIFS-IS_Crusader@seic.com), respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: 

\_\_\_\_\_  
Steven Varner  
Managing Director



Ross Tower  
500 N. Akard Street, Suite 3800  
Dallas, Texas 75201-6659  
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Fax 214.855.7584  
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Direct Dial 214.855.7587  
Direct Fax 214.878.5359  
drukavina@munsch.com

November 3, 2021

**Via E-Mail and Federal Express**

Ms. Nan R. Eitel  
Office of the General Counsel  
Executive Office for U.S. Trustees  
20 Massachusetts Avenue, NW  
8th Floor  
Washington, DC 20530  
Nan.r.Eitel@usdoj.gov

Re: Highland Capital Management, L.P. Bankruptcy Case  
Case No. 19-34054 (SGJ) Bankr. N.D. Tex.

Dear Ms. Eitel:

I am a senior bankruptcy practitioner who has worked closely with Douglas Draper (representing separate, albeit aligned, clients) in the above-referenced Chapter 11 case. I have represented debtors-in-possession on multiple occasions, have served as an adjunct professor of law teaching advanced corporate restructuring, and consider myself not only a bankruptcy expert, but an expert on the practicalities and realities of how estates and cases are administered and, therefore, how they could be manipulated for personal interests. I write to follow up on the letter that Douglas sent to your offices on October 4, 2021, on account of additional information my clients have learned in this matter. So that you understand, my clients in the case are NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P., both of whom are affiliated with and controlled by James Dondero, and I write this letter on their behalf and based on information they have obtained.

I share Douglas' view that serious abuses of the bankruptcy process occurred during the bankruptcy of Texas-headquartered Highland Capital Management, L.P. ("Highland" or the "Debtor") which, left uninvestigated and unaddressed, may represent a systemic issue that I believe would be of concern to your office and within your office's sphere of authority. Those abuses include potential insider trading and breaches of fiduciary duty by those charged with protecting creditors, understated estimations of estate value seemingly designed to benefit insiders and management, gross mistreatment of employees who were key to the bankruptcy process, and ultimately a plan aimed at liquidating an otherwise viable estate, to the detriment of third-party investors in Debtor-managed funds. To be clear, I recognize that the Bankruptcy Court has ruled the way that it has and I am not criticizing the Bankruptcy Court or seeking to attack any of its orders. Rather, as has been and will be shown, the Bankruptcy Court acted on misinformation presented to it, intentional lack of transparency, and manipulation of the facts and circumstances by the fiduciaries of the estate. I therefore wish to add my voice to Douglas' aforementioned letter, provide additional information, encourage your investigation, and offer whatever information or assistance I can.

The abuses here are akin to the type of systemic abuse of process that took place in the bankruptcy of Neiman Marcus (in which a core member of the creditors' committee admittedly attempted to perpetrate a massive fraud on creditors), and which is something that lawmakers should be concerned

EXHIBIT

001315

exhibitsticker.com

about, particularly to the extent that debtor management and creditors' committee members are using the federal bankruptcy process to shield themselves from liability for otherwise harmful, illegal, or fraudulent acts.

## BACKGROUND

### Highland Capital Management and its Founder, James Dondero

Highland Capital Management, L.P. is an SEC-registered investment advisor co-founded by James Dondero in 1993. A graduate of the University of Virginia with highest honors, Mr. Dondero has over thirty years of experience successfully overseeing investment and business activities across a range of investment platforms. Of note, Mr. Dondero is chiefly responsible for ensuring that Highland weathered the global financial crisis, evolving the firm's focus from high-yield credit to other areas, including real estate, private equity, and alternative investments. Prior to its bankruptcy, Highland served as advisor to a suite of registered funds, including open-end mutual funds, closed-end funds, and an exchange-traded fund.

In addition to managing Highland, Mr. Dondero is a dedicated philanthropist who has actively supported initiatives in education, veterans' affairs, and public policy. He currently serves as a member of the Executive Board of the Southern Methodist University Cox School of Business and sits on the Executive Advisory Council of the George W. Bush Presidential Center.

### Circumstances Precipitating Bankruptcy

Notwithstanding Highland's historical success with Mr. Dondero at the helm, Highland's funds—like many other investment platforms—suffered losses during the financial crisis, leading to myriad lawsuits by investors. One of the most contentious disputes involved a group of investors who had invested in Highland-managed funds collectively termed the "Crusader Funds." During the financial crisis, to avoid a run on the Crusader Funds at low-watermark prices, the funds' manager temporarily suspended redemptions, leading investors to sue. That dispute resolved with the formation of an investor committee self-named the "Redeemer Committee" and the orderly liquidation of the Crusader Funds, which resulted in investors' receiving a return of their investments plus a return, as opposed to the 20 cents on the dollar they would have received had their redemption requests been honored when made.

Despite this successful liquidation, the Redeemer Committee sued Highland again several years later, claiming that Highland had improperly delayed the liquidation and paid itself fees not authorized under the parties' earlier settlement agreement. The dispute went to arbitration, ultimately resulting in an arbitration award against Highland of \$189 million (of which Highland expected to make a net payment of \$110 million once the award was confirmed).

Believing that a restructuring of its judgment liabilities was in Highland's best interest, on October 16, 2019, Highland—a Delaware limited partnership—filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware.<sup>1</sup>

On October 29, 2019, the Bankruptcy Court appointed the Official Committee of Unsecured Creditors ("Creditors' Committee"). The Creditors' Committee Members (and the contact individuals for those members) are: (1) The Redeemer Committee of the Highland Crusader Fund (Eric Felton), (2) Meta e-Discovery (Paul McVoy), (3) UBS Securities LLC and UBS AG London Branch (Elizabeth

---

<sup>1</sup> *In re Highland Capital Mgmt., L.P.*, Case No. 19-12239-CSS (Bankr. D. Del.) ("Del. Case"), Dkt. 1.

Kozlowski), and (4) Acis Capital Management, L.P. and Acis Capital Management GP, LLP (Joshua Terry).<sup>2</sup> At the time of their appointment, creditors agreeing to serve on the Creditors' Committee were given an Instruction Sheet by the Office of the United States Trustee, instructing as follows:

**Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court. By submitting the enclosed Questionnaire and accepting membership on an official committee of creditors, you agree to this prohibition. The United States Trustee reserves the right to take appropriate action, including removing the creditor from any committee, if the information provided in the Questionnaire is inaccurate, if the foregoing prohibition is violated, or for any other reason the United States Trustee believes is proper in the exercise of her discretion.**

See Instruction Sheet, Ex. A (emphasis in original).

In response to a motion by the Creditors' Committee, on December 4, 2019, the Delaware Bankruptcy Court unexpectedly transferred the bankruptcy case to the Northern District of Texas, to Judge Stacey G.C. Jernigan's court.<sup>3</sup>

#### **SYSTEMIC PROBLEMS OCCURRING IN THE CONTEXT OF HIGHLAND'S COURT-ADMINISTERED BANKRUPTCY**

#### **Mr. Dondero Gets Pushed Out of Management and New Debtor Management Announces Plans to Liquidate the Estate**

From the outset of the case, the Creditors' Committee and the U.S. Trustee's Office in Dallas pushed to replace Mr. Dondero as the sole director of the Debtor's general partner, Strand Advisors, Inc. ("Strand"). To avoid a protracted dispute and to facilitate the restructuring, on January 9, 2020, Mr. Dondero agreed to resign as the sole director, on the condition that he would be replaced by three independent directors who would act as fiduciaries of the estate and work to restructure Highland's business so it could continue operating and emerge from bankruptcy as a going concern. As Mr. Draper previously has explained, the agreement approved by the Bankruptcy Court allowed Mr. Dondero, UBS (which held one of the largest claims against the estate), and the Redeemer Committee each to choose one director, and also established protocols for operations going forward. Mr. Dondero chose The Honorable Former Judge Russell F. Nelms, UBS chose John Dubel, and the Redeemer Committee chose James Seery.<sup>4</sup>

In brokering the agreement, Mr. Dondero made clear his expectations that new, independent management would not only preserve Highland's business by expediting an exit from bankruptcy in three to six months, but would also preserve jobs and enable continued collaboration with charitable causes supported by Highland and Mr. Dondero. Unfortunately, those expectations did not materialize. Rather, it quickly became clear that Strand's and Highland's management was being dominated by one of the

<sup>2</sup> Del. Case, Dkt. 65.

<sup>3</sup> See *In re Highland Capital Mgmt., L.P.*, Case No. 19-34054 (Bankr. N.D. Tex.), Dkt. 186. All subsequent docket references are to the docket of the Bankruptcy Court for the Northern District of Texas.

<sup>4</sup> See Stipulation in Support of Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 338; Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, Dkt. 339.

Ms. Nan R. Eitel  
November 3, 2021  
Page 4

independent directors, Mr. Seery (as will be seen, for his self-gain). Shortly after his placement on the Board, on March 15, 2020, Mr. Seery became de facto Chief Executive Officer, after which he immediately took steps to freeze Mr. Dondero out of operations completely, to the detriment of Highland's business and its employees. The Bankruptcy Court formally approved Mr. Seery's appointment as CEO and Chief Restructuring Officer on July 14, 2020.<sup>5</sup> Although Mr. Seery publicly represented that his goal was to restructure the Debtor's business and enable it to emerge as a going concern, privately he was engineering a much different plan. Less than two months after Mr. Seery's appointment as CEO/CRO, the Debtor filed its initial plan of reorganization, disclosing for the first time its intention to terminate substantially all employees by the end of 2020 and to liquidate Highland's assets by 2022.<sup>6</sup>

Over objections by Mr. Dondero and numerous other stakeholders, the Bankruptcy Court confirmed Highland's Fifth Amended Plan of Reorganization on February 22, 2021 (the "Plan").<sup>7</sup> There are appeals of that Plan, as well as many of the other rulings made by the Bankruptcy Court, currently pending before the United States District Court and the Court of Appeals for the Fifth Circuit.

## **Transparency Problems Pervade the Bankruptcy Proceedings**

### ***The Regulatory Framework***

As you are aware, one of the most important features of federal bankruptcy proceedings is transparency. The EOUST instructs that "Debtors-in-possession and trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate's administration as parties in interest request; and file periodic reports and summaries of a debtor's business, including a statement of receipts and disbursements, and such other information as the United States Trustee or the United States Bankruptcy Court requires." See <http://justice.gov/ust/chapter-11-information> (citing 11 U.S.C. § 1106(a)(1), 1107(a)). And Federal Rule of Bankruptcy Procedure 2015.3(a) states that "the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." This rule requires the trustee or a debtor in possession to file a report for each non-debtor affiliate prior to the first meeting of creditors and every six months thereafter until the effective date of a plan of reorganization. Fed R. Bankr. P. 2015.3(b). Importantly, the rule does not absolve a debtor from filing reports due prior to the effective date merely because a plan has become effective.<sup>8</sup> Notably, the U.S. Trustee has the duty to ensure that debtors in possession properly and timely file all required reports. 28 U.S.C. § 1112(b)(4)(F), (H).

The entire purpose of these guidelines and rules is to ensure that external stakeholders can fairly evaluate the progress of bankruptcy proceedings, including compliance with legal requirements. Particularly in large bankruptcies, creditors and investors alike should expect that debtors, their

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<sup>5</sup> See Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020, Dkt. 854.

<sup>6</sup> See Plan of Reorganization of Highland Capital Management, L.P. dated August 12, 2020, Dkt. 944.

<sup>7</sup> See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified); and (II) Granting Related Relief, Dkt. 1943.

<sup>8</sup> After notice and a hearing, the bankruptcy court may grant relief from the Rule 2015.3 disclosure requirement "for cause," including that "the trustee or debtor in possession is not able, after a good faith effort, to comply with th[e] reporting requirements, or that the information required by subdivision (a) is publicly available." Fed. R. Bankr. 2015.3(d).

Ms. Nan R. Eitel

November 3, 2021

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management, and representatives on creditors' committees abide by their reporting obligations and all other legal requirements. Bankruptcy is not meant to be a safe haven for lawlessness, nor is it designed to obfuscate the operations of the debtor. Instead, transparency is mandatory so that the debtor is accountable to stakeholders and so that stakeholders can ensure that all insiders are operating for the benefit of the estate.

### ***In Highland's Bankruptcy, the Regulatory Framework Is Ignored***

Against this regulatory backdrop, and on the heels of high-profile bankruptcy abuses like those that occurred in the context of the Neiman Marcus bankruptcy, the Highland bankruptcy offered almost no transparency to stakeholders. Traditional reporting requirements were ignored. This opened the door to numerous abuses of process and potential violations of federal law, as detailed below.

As Mr. Draper already has highlighted, one significant problem in Highland's bankruptcy was the Debtor's failure to file *any* of the reports required under Bankruptcy Rule 2015.3, either on behalf of itself or its affiliated entities. Typically, such reports would include information like asset value, income from financial operations, profits, and losses for each non-publicly traded entity in which the estate has a substantial or controlling interest. This was very important here, where the Debtor held the bulk of its value—hundreds of millions of dollars—in non-debtor subsidiaries. The Debtor's failure to file the required Rule 2015.3 reports was brought to the attention of the Debtor, the Bankruptcy Court, and the U.S. Trustee's Office. During the hearing on Plan confirmation, the Debtor was questioned about the failure to file the reports. The sole excuse offered by the Debtor's Chief Restructuring Officer and Chief Executive Officer, Mr. Seery, was that the task "fell through the cracks."<sup>9</sup> Nor did the Debtor or its counsel ever attempt to show "cause" to gain exemption from the reporting requirement. That is because there was no good reason for the Debtor's failure to file the required reports. In fact, although the Debtor and the Creditors' Committee often refer to the Debtor's structure as a "byzantine empire," the assets of the estate fall into a handful of discrete investments, most of which have audited financials and/or are required to make monthly or quarterly net-asset-value or fair-value determinations.<sup>10</sup> Rather than disclose financial information that was readily available, the Debtor appears to have taken deliberate and strategic steps to avoid transparency.

In stark contrast to its non-existent public disclosures, the Debtor provided the Creditors' Committee with robust weekly information regarding transactions involving assets held by the Debtor or its wholly-owned subsidiaries, transactions involving managed entities and non-managed entities in which the Debtor held an interest, transactions involving non-discretionary accounts, and weekly budget-to-actuals reports referencing non-Debtor affiliates' 13-week cash flow budget. In other words, the Committee member had real-time financial information with respect to the affairs of non-debtor affiliates, which is precisely the type of information that should have been disclosed to the public pursuant to Rule 2015.3. Yet, the fact that the Committee members alone had this information enabled some of them to trade on it, for their personal benefit.

The Debtor's management failed and refused to make other critical disclosures as well. As explained in detail below, during the bankruptcy proceedings, the Debtor sold off sizeable assets without any notice and without seeking Bankruptcy Court approval. The Debtor characterized these transactions as the "ordinary course of business" (allowing it to avoid the Bankruptcy Court approval process), but

<sup>9</sup> See Dkt. 1905 (Feb. 3, 2021 Hr'g Tr. at 49:5-21).

<sup>10</sup> During a deposition, Mr. Seery identified most of the Debtor's assets "[o]ff the top of [his] head" and acknowledged that he had a subsidiary ledger that detailed the assets held by entities below the Debtor. See Exh. A (Jan. 29, 2021 Dep. Tr. at 22:4-10; 23:1-29:10).

Ms. Nan R. Eitel

November 3, 2021

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they were anything but ordinary. In addition, the Debtor settled the claims of at least one creditor—former Highland employee Patrick Daugherty—without seeking court approval of the settlement pursuant to Federal Rule of Bankruptcy Procedure 9019. We understand that the Debtor paid Mr. Daugherty \$750,000 in cash as part of that settlement, done as a “settlement” to obtain Mr. Daugherty’s withdrawal of his objection to the Debtor’s plan.

Despite all of these transparency problems, the Debtor’s confirmed Plan contains provisions that effectively release the Debtor from its obligation to file *any* of the reports due for *any* period prior to the effective date—thereby sanctioning the Debtor’s failure and refusal to follow the rules. The U.S. Trustee also failed to object to this portion of the Court’s order of confirmation, which is directly at odds with the spirit and mandate of the Periodic Reporting Requirements recently adopted by the EOUST and historical rules mandating transparency.<sup>11</sup>

As will become apparent, because neither the federal Bankruptcy Court nor the U.S. Trustee advocated or demanded compliance with the rules, the Debtor, its newly-appointed management, and the Creditors’ Committee charged with protecting the interests of all creditors were able to manipulate the estate for the benefit of a handful of insiders, seemingly in contravention of law.

### **Debtor And Debtor-Affiliate Assets Were Deliberately Hidden and Mischaracterized**

Largely because of the Debtor’s failure to file Rule 2015.3 reports for affiliate entities, interested parties and creditors wishing to evaluate the worth and mix of assets held in non-Debtor affiliates could not do so. This is particularly problematic, because during proceedings, the Debtor sold \$172 million in assets, which altered the mix of assets and liabilities of the Debtor’s affiliates and controlled entities. In addition, the estate’s asset value decreased by approximately \$200 million in a matter of months. Absent financial reporting, it was impossible for stakeholders to determine whether the \$200 impairment in asset value reflected actual realized losses or merely temporary mark-downs precipitated by problems experienced by certain assets during the pandemic (including labor shortages, supply-chain issues, travel interruptions, and the like). Although the Bankruptcy Court held that such sales did not require Court approval, a Rule 2015.3 report would have revealed the mix of assets and the corresponding reduction in liabilities of the affiliated or controlled entity—information that was critical in evaluating the worth of claims against the estate or future investments into it.

One transaction that was particularly problematic involved alleged creditor HarbourVest, a private equity fund with approximately \$75 billion under management. Prior to Highland’s bankruptcy, HarbourVest had invested \$80 million into (and obtained 49.98% of the outstanding shares of) a Highland fund called Acis Loan Funding, later rebranded as Highland CLO Funding, Ltd. (“HCLOF”). A charitable fund called Charitable DAF Fund, L.P. (“DAF”) held 49.02% member interests in HCLOF, and the remaining 2.00% was held by Highland and certain of its employees. Prior to Highland’s bankruptcy proceedings, a dispute arose between HarbourVest and Highland, in which HarbourVest claimed it was duped into making the investment because Highland allegedly failed to disclose key facts relating to the investment (namely, that Highland was engaged in ongoing litigation with former employee, Josh Terry,

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<sup>11</sup> See “*Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11*” (the “Periodic Reporting Requirements”). The Periodic Reporting Requirements reaffirmed the EOUST’s commitment to maintaining “uniformity and transparency regarding a debtor’s financial condition and business activities” and “to inform creditors and other interested parties of the debtor’s financial affairs.” 85 Fed. Reg. 82906.

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which would result in HCLOF's incurring legal fees and costs). HarbourVest alleged that, as a result of the Terry lawsuit, HCLOF incurred approximately \$15 million in legal fees and costs.<sup>12</sup>

In the context of Highland's bankruptcy, however, HarbourVest filed a proof of claim alleging that it was due over \$300 million in damages in the dispute, a claim that bore no relationship to economic reality. As a result, Debtor management initially valued HarbourVest's claims at \$0, a value consistently reflected in the Debtor's publicly-filed financial statements, up through and including its December 2020 Monthly Operating Report.<sup>13</sup> Eventually, however, the Debtor announced a settlement with HarbourVest which entitled HarbourVest to \$45 million in Class 8 claims and \$35 million in Class 9 claims.<sup>14</sup> At the time, the Debtor's public disclosures reflected that Class 8 creditors could expect to receive approximately 70% payout on their claims, and Class 9 creditors could expect 0.00%. In other words, HarbourVest's total \$80 million in allowed claims would allow HarbourVest to realize a \$31.5 million return.<sup>15</sup>

As consideration for this potential payout, HarbourVest agreed to convey its interest in HCLOF to a special-purpose entity ("SPE") designated by the Debtor (a transaction that involved a trade of securities) and to vote in favor of the Debtor's Plan. In its pleadings and testimony in support of the settlement, the Debtor represented that the value of HarbourVest's interest in HCLOF was \$22.5 million. It later came to light, however, that the actual value of that asset was at least \$44 million.

There are numerous problems with this transaction which may not have occurred with the requisite transparency. As a registered investment advisor, the Debtor had a fiduciary obligation to disclose the true value of HarbourVest's interest in HCLOF to investors in that fund. The Debtor also had a fiduciary obligation to offer the investment opportunity to the other investors prior to purchasing HarbourVest's interest for itself. Mr. Seery has acknowledged that his fiduciary duties to the Debtor's managed funds and investors supersedes any fiduciary duties owed to the Debtor and its creditors in bankruptcy. Nevertheless, the Debtor and its management appear to have misrepresented the value of the HarbourVest asset, brokered a purchase of the asset without disclosure to investors, and thereafter placed the HarbourVest interest into a non-reporting SPE.<sup>16</sup> This meant that no outside stakeholder had any ability to assess the value of that interest, nor could any outsider possibly ascertain how the acquisition of that interest impacted the bankruptcy estate. In the absence of Rule 2015.3 reports or listing of the HCLOF interest on the Debtor's balance sheet, it was impossible to determine at the time of the HarbourVest settlement (or thereafter) whether the Debtor properly accounted for the asset on its balance sheet.

Highland engaged in several other asset sales in bankruptcy without disclosing those sales in advance to outside stakeholders or investors, and without offering investors in funds impacted by the sales the opportunity to purchase the assets. For example:

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<sup>12</sup> Assuming that HarbourVest were entitled to fraud damages as it claimed, the true amount of its damages was less than \$7.5 million (because HarbourVest only would have borne 49.98% of the \$15 million in legal fees).

<sup>13</sup> See Monthly Operating Report for Highland Capital Management for the Month Ending December 2020, Dkt. 1949.

<sup>14</sup> Class 8 consists of general unsecured claims; Class 9 consists of subordinated claims.

<sup>15</sup> We have reason to believe that HarbourVest's Class 8 and Class 9 claims were contemporaneously sold to Farallon Capital Management—an SEC-registered investment advisor—for approximately \$28 million.

<sup>16</sup> Even former Highland employee Patrick Daugherty recognized the problematic nature of asset dispositions like the one involving HarbourVest, commenting that such transactions "have left [Mr. Seery] and Highland vulnerable to a counter-attack under the [Investment] Advisors Act." See Ex. B.

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- The Debtor sold approximately \$25 million of NexPoint Residential Trust shares that today are valued at over \$70 million; the Debtor likewise sold \$6 million of PTLA shares that were taken over less than 60 days later for \$18 million.
- The Debtor divested interests worth \$145 million held in certain life settlements (which paid on the death of the individuals covered, whose average age was 90) for \$35 million rather than continuing to pay premiums on the policies, and did so without obtaining updated estimates of the life settlements' value, to the detriment of the fund and investors (today two of the covered individuals have a life expectancy of less than one year);
- The Debtor sold interests in OmniMax without informing the Bankruptcy Court, without engaging in a competitive bidding process, and without cooperating with other funds managed by Mr. Dondero, resulting in what we believe is substantially lesser value to investors;
- The Debtor sold interests in Structural Steel Products (worth \$50 million) and Targa (worth \$37 million), again without any process or notice to the Bankruptcy Court or outside stakeholders, resulting in what we believe is diminished value for the estate and investors.

Because the Bankruptcy Code does not define what constitutes a transaction in the "ordinary course of business," the Debtor's management was able to characterize these massive sales as ordinary course transactions when they were anything but ordinary, resulting in diminution in value to the estate and its creditors.

In summary, the consistent lack of transparency throughout bankruptcy proceedings facilitated sales and deal-making that failed to maximize value for the estate and precluded outside stakeholders from evaluating or participating in asset purchases or claims trading that might have benefitted the estate and outside investors in Debtor-managed funds.

### **The Debtor Reneged on Its Promise to Pay Key Employees, Contrary to Sworn Testimony**

Highland's bankruptcy also diverges from the norm in its treatment of key employees, who usually can expect to be fairly compensated for pre-petition work and post-petition work done for the benefit of the estate. That did not happen here, despite the Debtor's representation to the Bankruptcy Court that it would.

By way of background, prior to its bankruptcy, Highland offered employees two bonus plans: an Annual Bonus Plan and a Deferred Bonus Plan. Under the Annual Bonus Plan, all of Highland's employees were eligible for a yearly bonus payable in up to four equal installments, at six-month intervals, on the last business day of each February and August. Under the Deferred Bonus Plan, Highland's employees were awarded shares of a designated publicly traded stock, the right to which vested 39 months later. Under both bonus plans, the only condition to payment was that the employee be employed by Highland at the time the award (or any portion of it) vested.

At the outset of the bankruptcy proceedings, the Debtor promised that pre-petition bonus plans would be honored. Specifically, in its Motion For Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief, the Debtor informed the Court that employee bonuses "continue[d] to be earned on a post-petition basis," and that "employee compensation under the Bonus Plans [was] critical to the Debtor's ongoing

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operations and that any threat of nonpayment under such plans *would have a potentially catastrophic impact on the Debtor's reorganization efforts.*<sup>17</sup> Significantly, the Debtor explained to the Court that its operations were leanly staffed, such that all employees were critical to ongoing operations and such that it expected to compensate all employees. As a result of these representations, key employees continued to work for the Debtor, some of whom invested significant hours at work ensuring that the Debtor's new management had access to critical information for purposes of reorganizing the estate.

Having induced Highland's employees to continue their employment, the Debtor abruptly changed course, refusing to pay key employees awards earned pre-petition under the Annual Bonus Plan and bonuses earned pre-petition under the Deferred Bonus Plan that vested post-petition. In fact, Mr. Seery chose to terminate four key employees just before the vesting date in an effort to avoid payment, despite his repeated assurances to the employees that they would be "made whole." Worse still, notwithstanding the Debtor's failure and refusal to pay bonuses earned and promised to these terminated employees, in Monthly Operating Reports signed by Mr. Seery under penalty of perjury, the Debtor continued to treat the amounts owed to the employees as post-petition obligations, which the Debtor continued to accrue as post-petition liabilities even after termination of their employment.

The Debtor's misrepresentations to the Bankruptcy Court and to the employees themselves fly in the face of usual bankruptcy procedure. As the Fifth Circuit has explained, administrative expenses like key employee salaries are an "actual and necessary cost" that provides a "benefit to the state and its creditors."<sup>18</sup> It is undisputed that these employees continued to work for the Debtor, providing an unquestionable benefit to the estate post-petition, but were not provided the promised compensation, for reasons known only to the Debtor.

Again, this is not business as usual in bankruptcy proceedings, and if we are to ensure the continued success of debtors in reorganization proceedings, it is important that key employees be paid in the ordinary course for their efforts in assisting debtors and that debtor management be made to live up to promises made under penalty of perjury to the bankruptcy courts.

### **There Is Substantial Evidence that Insider Trading Occurred**

Perhaps one of the biggest problems with the lack of transparency at every step is that it facilitated potential insider trading. The Debtor (as well as its advisors and professionals) and the Creditors' Committee (and its counsel) had access to critical information upon which any reasonable investor would rely. But because of the lack of reporting, the public did not.

Mr. Draper's October 4, 2021 letter sets forth in detail the reasons for suspecting that insider trading occurred, but his explanation bears repeating here. In the context of a non-transparent bankruptcy proceeding, three of the four members of the Creditors' Committee and one non-committee member sold their claims to two buyers, Muck Holdings LLC ("Muck") and Jessup Holdings LLC ("Jessup"). The four claims sold comprise the largest four claims in the Highland bankruptcy by a substantial margin,<sup>19</sup> collectively totaling almost \$270 million in Class 8 claims and \$95 million in Class 9 claims:

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<sup>17</sup> See Dkt. 177, ¶ 25 (emphasis added).

<sup>18</sup> *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (quoting *Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992)).

<sup>19</sup> See Ex. C.

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<u>Claimant</u>	<u>Class 8 Claim</u>	<u>Class 9 Claims</u>	<u>Date Claim Settled</u>
Redeemer Committee	\$136,696,610	N/A	October 28, 2020
Acis Capital	\$23,000,000	N/A	October 28, 2020
HarbourVest	\$45,000,000	\$35,000,000	January 21, 2021
UBS	\$65,000,000	\$60,000,000	May 27, 2021
<b>TOTAL:</b>	<b>\$269,696,610</b>	<b>\$95,000,000</b>	

Muck is owned and controlled by Farallon Capital Management (“Farallon”), and we believe Jessup is owned and controlled by Stonehill Capital Management (“Stonehill”). As the purchasers of the four largest claims in the bankruptcy, Muck (Farallon) and Jessup (Stonehill) will oversee the liquidation of the reorganized Debtor and the payment over time to creditors who have not sold their claims. These two hedge funds also will determine the performance bonus due to Mr. Seery for liquidating the estate. As set forth in the attached balance sheet dated August 31, 2021, we estimate that the estate today is worth nearly \$600 million,<sup>20</sup> which could result in Mr. Seery’s receipt of a performance bonus approximating \$50 million.

This is concerning because there is substantial evidence that Farallon and Stonehill may have been provided material, non-public information to induce their purchase of these claims. We agree with Mr. Draper that there are three primary reasons to believe that non-public information was made available to facilitate these claims purchases:

- The scant publicly-available information regarding the Debtor’s estate ordinarily would have dissuaded sizeable investment in purchases of creditors’ claims;
- The information that actually was publicly available ordinarily would have compelled a prudent investor to conduct robust due diligence prior to purchasing the claims;
- Yet these claims purchasers spent in excess of \$100 million (and likely closer to \$150 million) on claims, ostensibly without any idea of what they were purchasing.

Credible information indicates that the claims purchases of Stonehill and Farallon can be summarized as follows:

<u>Creditor</u>	<u>Class 8</u>	<u>Class 9</u>	<u>Purchaser</u>	<u>Purchase Price</u>
Redeemer	\$137.0	\$0.0	Stonehill	\$78.0 <sup>21</sup>
ACIS	\$23.0	\$0.0	Farallon	\$8.0
HarbourVest	\$45.0	\$35.0	Farallon	\$27.0
UBS	\$65.0	\$60.0	Stonehill and Farallon	\$50.0

<sup>20</sup> See Ex. D.

<sup>21</sup> See Ex. E. Because the transaction included “the majority of the remaining investments held by the Crusader Funds,” the net amount paid by Stonehill for the Claims was approximately \$65 million.

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An analysis of publicly-available information would have revealed to any potential investor that:

- The estate's asset value had decreased by \$200 million, from \$556 million on October 16, 2019, to \$328 million as of September 30, 2020 (increasing only slightly to \$364 million as of January 31, 2021).<sup>22</sup>
- Allowed claims against the estate increased by a total amount of \$236 million.
- Due to the decrease in the value of the Debtor's assets and the increase in the allowed claims amount, the ultimate projected recovery for creditors in bankruptcy decreased from 87.44% to 62.99% in just a matter of months.<sup>23</sup>

No prudent investor or hedge fund investing third-party money would purchase substantial claims out of the Highland estate based on this publicly-available information absent robust due diligence demonstrating that the investment was sound.

As discussed by Mr. Draper, the very close relationships between the claims purchasers, on the one hand, and the selling Creditors' Committee members and the Debtor's management, on the other hand also raise red flags. In particular:

- Farallon and Stonehill have long-standing, material relationships with the members of the Creditors' Committee and Mr. Seery. Mr. Seery formerly was the Global Head of Fixed Income Loans at Lehman Bros. until its collapse in 2009. While Mr. Seery was Global Head, Lehman Bros. did substantial business with Farallon. After Lehman's collapse, Mr. Seery joined Sidley & Austin as co-head of the corporate restructuring and bankruptcy group, where he worked with Matt Clemente, counsel to the Creditors' Committee in Highland's bankruptcy proceedings.
- In addition, Grovesnor, one of the lead investors in the Crusader Funds from the Redeemer Committee (which appointed Seery as its independent director) both played a substantial role on the Creditors' Committee and is a large investor in Farallon and Stonehill. It is unclear whether Grovesnor, a registered investment advisor, notified minority investors in the Crusader Funds or Farallon and Stonehill of these facts.
- According to Farallon principals Raj Patel and Michael Linn, while at Sidley, Mr. Seery assisted Farallon in its acquisition of claims in the Lehman estate, and Farallon realized more than \$100 million in claims on those trades.

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<sup>22</sup> Compare Jan. 31, 2021 Monthly Operating Report [Dkt. 2030], with Disclosure Statement (approved on Nov. 24, 2020) [Dkt. 1473]. The increase in value between September 2020 and January 2021 is attributable to the Debtor's settlement with HarbourVest, which granted HarbourVest a Class 8 claim of \$45 million and a Class 9 Claim of \$35 million, and in exchange the Debtor received HarbourVest's interest in HCLOF, which in reality was worth approximately \$44.3 million as of January 31, 2021. See Ex. C. It is also notable that the January 2021 monthly financial report values Class 8 claims at \$267 million, an exponential increase over their estimated value of \$74 million in December 2020.

<sup>23</sup> See Ex. F.

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- Also while at Sidley, Mr. Seery represented the Steering Committee in the Blockbuster Video bankruptcy; Stonehill (through its Managing Member, John Motulsky) was one of the five members of the Steering Committee.
- Mr. Seery left Sidley in 2013 to become the President and Senior Investment Partner of River Birch Capital, a hedge fund founded by his former Lehman colleagues. He left River Birch in October 2017 just before the fund imploded. In 2017, River Birch and Stonehill Capital were two of the biggest note holders in the Toys R Us bankruptcy and were members of the Toys R Us creditors' committee.

I strongly agree with Mr. Draper that it is suspicious that two firms with such significant ties to Mr. Seery have purchased \$365 million in claims. The aggregate \$150 million purchase price paid by Farallon and Stonehill is 56% of all Class 8 claims, virtually the full plan value expected to be realized after two years. We believe it is worth investigating whether these claims buyers had access to material, non-public information regarding the actual value of the estate.

Other transactions occurring during the Highland bankruptcy also reinforce the suspicion that insider trading occurred. In particular, it appears that one of the claims buyers, Stonehill, used non-public information obtained incident to the bankruptcy to purchase stock in NexPoint Strategic Opportunities Fund (NYSE: NHF), a publicly traded, closed-end '40 Act fund with many holdings in common with assets held in the Highland estate outlined above. Stonehill is a registered investment adviser with \$3 billion under management that has historically owned very few equity interests, particularly equity interests in a closed-end fund. As disclosed in SEC filings, Stonehill acquired enough stock in NHF during the second quarter of 2021 to make it Stonehill's eighth largest equity position.

The timing of the acquisitions of claims by Farallon and Stonehill also raises suspicion. For example, although notices of the transfer of the claims were filed immediately after the confirmation of the Debtor's Plan and prior to the effective date of the Plan, it seems likely that negotiations began much earlier. Transactions of this magnitude do not take place overnight and typically require robust due diligence. Muck was formed on March 9, 2021, more than a month before it filed notice that it was purchasing the Acis claim. If the negotiation or execution of a definitive agreement for the purchase began before or contemporaneously with Muck's formation, then there is every reason to believe that selling Creditors' Committee members and/or Debtor management provided Farallon with critical non-public information well before the Creditors' Committee members sold their claims and withdrew from the Committee. Indeed, Mr. Patel and Mr. Linn have stated to others that they purchased the Acis and HarbourVest claims in late January or early February. This is strong evidence that negotiation and/or agreements relating to the purchase of claims from Creditors' Committee members preceded the confirmation of the Debtor's Plan and the resignation of those members from the Committee.

Likewise, correspondence from the fund adviser to the Crusader Funds indicates that the Crusader Funds and the Redeemer Committee had "consummated" the sale of the Redeemer Committee's claims and other assets on April 30, 2021, "for \$78 million in cash, which was paid in full to the Crusader Funds at closing."<sup>24</sup> In addition, that there was a written agreement among Stonehill, the Crusader Funds, and the Redeemer Committee that sources indicate dates back to the fourth quarter of 2020. That agreement presumably imposed affirmative and negative covenants upon the seller and granted the purchaser discretionary approval rights during the pendency of the sale. Such an agreement would necessarily conflict with the Creditors' Committee members' fiduciary obligations.

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<sup>24</sup> See Ex. E.

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The sale of the claims by the members of the Creditors' Committee also violates the instructions provided to committee members by the U.S. Trustee that required a selling committee member to obtain approval from the Bankruptcy Court prior to any sale of such member's claim. No such Court approval was ever sought or obtained, and the Dallas U.S. Trustee's Office took no action to enforce this guideline. The Creditors' Committee members were sophisticated entities, and they were privy to inside information that was not available to other unsecured creditors. For example, valuations of assets placed into a specially-created affiliated entities, such as the assets acquired in the HarbourVest settlement, and valuations of assets held by other entities owned or controlled by the Debtor, were available to the selling Creditors' Committee members, but not to other creditors or parties-in-interest.

While claims trading itself is not prohibited, there is reason to believe that the claims trading that occurred in the Highland bankruptcy violated federal law:

- a) The selling parties were *three* of the four Creditors' Committee members, and each one had access to information they received in a fiduciary capacity;
- b) Some of the information they received would have been available to other parties-in-interest if Rule 2015.3 had been enforced;
- c) The projected recovery to creditors decreased significantly between the approval of the Disclosure Statement and the confirmation of the Debtor's Plan; and
- d) There was a suspicious purchase of stock by Stonehill in NHF, a closed-end fund previously affiliated with Highland (and now managed by NexPoint Advisors, L.P.) that is publicly traded on the New York stock exchange. The Debtor's assets and the positions held by the closed-end fund are similar.

### **Mr. Seery's Compensation Structure Encouraged Misrepresentations Regarding the Value of the Estate and Assets of the Estate**

An additional problem in Highland's bankruptcy is that Mr. Seery, as an Independent Director as well as the Debtor's CEO and CRO, received financial incentives that encouraged claims trading and dealing in insider information.

Mr. Seery received sizeable compensation for his heavy-handed role in Highland's bankruptcy. Upon his appointment as an Independent Director in January 2020, Mr. Seery received compensation from the Debtor of \$60,000 per month for the first three months, \$50,000 per month for the following three months, and \$30,000 per month for remaining months, subject to adjustment by agreement with the Debtor.<sup>25</sup> When Mr. Seery subsequently was appointed the Debtor's CEO and CRO in July 2020, he received additional compensation, including base compensation of \$150,000 per month retroactive to March 2020 and for so long as he served in those roles, as well as a "Restructuring Fee."<sup>26</sup> Mr. Seery's employment agreement contemplated that the Restructuring Fee could be calculated in one of two ways:

- (1) If Mr. Seery were able to resolve a material amount of outstanding claims against the estate, he would be entitled to \$1 million on confirmation of what the Debtor termed a

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<sup>25</sup> See Dkt. 339, ¶ 3.

<sup>26</sup> See Dkt. 854, Ex. 1.

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“Case Resolution Plan,” \$500,000 at the effective date of the Case Resolution Plan, and \$750,000 upon completion of distributions to creditors under the plan.

- (2) If, by contrast, Mr. Seery were not able to resolve the estate and instead achieved a “Monetization Vehicle Plan,” he would be entitled to \$500,000 on confirmation of the Monetization Vehicle Plan, \$250,000 at the effective date of that plan, and—most importantly—a to-be-determined “contingent restructuring fee” based on “performance under the plan after all material distributions” were made.

The Restructuring Fee owed for a Case Resolution Plan was materially higher than that payable under the Monetization Vehicle Plan and provided a powerful economic incentive for Mr. Seery to resolve creditor claims in any way possible. Notably, at the time of Mr. Seery’s formal appointment as CEO/CRO, he had already negotiated settlements in principle with Acis and the Redeemer Committee, leaving only the HarbourVest and UBS claims to resolve.

Further, after the Plan’s effective date, as appointed Claimant Trustee, Mr. Seery was promised compensation of \$150,000 per month (termed his “Base Salary”), subject to the negotiation of additional “go-forward” compensation, including a “success fee” and severance pay.<sup>27</sup> Mr. Seery’s success fee presumably will be based on whether the Plan outperforms what was disclosed in the Plan Analysis. In other words, Mr. Seery had a financial incentive to grossly understate the value of the estate in public disclosures, not only to facilitate claims trading and resolution of the biggest claims in bankruptcy (for purposes of obtaining the larger Case Resolution Fee) but also to ensure that he eventually receives a large “success fee.” Again, we estimate that, based on the estate’s nearly \$600 million value today, Mr. Seery’s success fee could approximate \$50 million.

One excellent example of the way in which Mr. Seery facilitated claims trading and thereby lined his own pockets is the sale of UBS’s claim. Based on the publicly-available information at the time Stonehill and Farallon purchased the UBS claim, the purchase made no economic sense. At the time, the publicly-disclosed Plan Analysis estimated that there would be a 71.32% distribution to Class 8 creditors and a 0.00% distribution to Class 9 creditors, which would mean believe is that, at the time of their claims purchase, the estate actually was worth much, much more (between \$472-\$600 million). If, prior to their claims purchases, Mr. Seery (or others in the Debtor’s management) apprised Stonehill and Farallon of the true estate value (which was material, non-public information at the time), then the value they paid for the UBS claim made sense, because they would have known they were likely to recover close to 100% on Class 8 and Class 9 claims.

But perhaps the most important evidence of mismanagement of this bankruptcy proceeding and misalignment of financial incentives is the Debtor’s repeated refusal to resolve the estate in full despite dozens of opportunities to do so. Immediately prior to the Plan confirmation hearing, Judge Jernigan suggested that the Creditors’ Committee and Mr. Dondero attempt to reach a settlement. Mr. Dondero, through counsel, already had made 35 offers of settlement that would have maximized the estate’s recovery, even going so far as to file a proposed plan of reorganization. Some of these offers were valued between \$150 and \$232 million. And we now believe that as of August 1, 2020, the Debtor’s estate had an actual value of at least \$460 million, including \$105 million in cash and a \$50 million revolving credit facility. With Mr. Dondero’s offer, the Debtor’s cash and the credit facility could have resolved the estate, which would have enabled the Debtor to pay all proofs of claim, leave a residual estate intact for equity holders, and allow the company to continue to operate as a going concern.

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<sup>27</sup> See Plan Supplement, Dkt. 1875, § 3.13(a)(i).

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Nonetheless, neither the Debtor nor the Creditors' Committee responded to Mr. Dondero's offers. It was not until The Honorable Former Judge D. Michael Lynn, counsel for Mr. Dondero, reminded the Creditors' Committee counsel that its members had a fiduciary duty to respond that a response was forthcoming. We believe Mr. Dondero's proposed plan offered a materially greater recovery than what the Debtor had reported would be the expected Plan recovery. The Creditors' Committee's failure to timely respond to that offer suggests that Debtor management, the Creditors' Committee, or both were financially disincentivized from accepting a case resolution offer and that some members of the Creditors' Committee were contractually constrained from doing so.

What happened instead was that the Debtor, its management, and the Creditors' Committee brokered deals that allowed grossly inflated claims and sales of those claims to a small group of investors with significant ties to Debtor management. In a transparent bankruptcy proceeding, we question whether any of this could have happened. What we do know is that the Debtor's non-transparent bankruptcy has ensured there will be nothing left for residual stakeholders, while enriching a handful of intimately connected individuals and investors.

### **The Debtor's Management and Advisors Are Almost Totally Insulated From Liability**

Despite the mismanagement of bankruptcy proceedings, the Bankruptcy Court has issued a series of orders ensuring that the Debtor and its management cannot not be held liable for their actions in bankruptcy.

In particular, the Court issued a series of orders protecting Mr. Seery from potential liability for any act undertaken in the management of the Debtor or the disposition of its assets:

- In its order approving the settlement between the Creditors' Committee and Mr. Dondero, the Court barred any Debtor entity "from commenc[ing] or pursu[ing] a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent Director's advisors relating in any way to the Independent Director's role as an independent director" unless the Court first (1) determined the claim was a "colorable" claim for willful misconduct or gross negligence, and (2) authorized an entity to bring the claim. The Court also retained "sole jurisdiction" over any such claim.<sup>28</sup>
- In its order approving the Debtor's retention of Mr. Seery as its Chief Executive Officer and Chief Restructuring Officer, the Court issued an identical injunction barring any claims against Mr. Seery in his capacity as CEO/CRO without prior court approval.<sup>29</sup> The same order authorized the Debtor to indemnify Mr. Seery for any claims or losses arising out of his engagement as CEO/CRO.<sup>30</sup>

Worse still, the Plan approved by the Bankruptcy Court contains sweeping release and exculpation provisions that make it virtually impossible for third parties, including investors in the Debtor's managed funds, to file claims against the Debtor, its related entities, or their management. The Plan's exculpation provisions contain also contain a requirement that any potential claims be vetted and approved by the Bankruptcy Court. As Mr. Draper already explained, these provisions violate the holding

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<sup>28</sup> Dkt. 339, ¶ 10.

<sup>29</sup> Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr. as Chief Executive Office, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020, Dkt. 854, ¶ 5.

<sup>30</sup> Dkt. 854, ¶ 4 & Exh. 1.

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of *In re Pacific Lumber Co.*, in which the United States Court of Appeals for the Fifth Circuit rejected similarly broad exculpation clauses.<sup>31</sup>

The fundamental problem with the Plan's broad exculpation and release provisions has been brought into sharp focus in recent days, with the filing of a lawsuit by the Litigation Trustee against Mr. Dondero, other individuals formerly affiliated with Highland, and several trusts and entities affiliated with Mr. Dondero.<sup>32</sup> Among other false accusations, that lawsuit alleges that the aggregate amount of allowed claims in bankruptcy was high because the Debtor and its management were forced to settle with various purported judgment creditors who had engaged in pre-petition litigation with Mr. Dondero and Highland. But it was Mr. Seery and Debtor's management, not Mr. Dondero and the other defendants, who negotiated those settlements with creditors in bankruptcy and who decided what value to assign to their claims. Ordinarily, Mr. Dondero and the other defendants could and would file compulsory counterclaims against the Debtor and its management for their role in brokering and settling claims in bankruptcy. But the Bankruptcy Court has effectively precluded such counterclaims (absent the defendants obtaining the Court's advance permission to assert them) by releasing the Debtor and its management from virtually all liability in relation to their roles in the bankruptcy case. That is a violation of due process.

Notably, the U.S. Trustee's Office recently has argued in the context of the bankruptcy of Purdue Pharma that release and exculpations clauses akin to those contained in Highland's Plan violate both the Bankruptcy Code and the Due Process Clause of the United States Constitution.<sup>33</sup> In addition, the U.S. Trustee explained that the bankruptcy courts lack constitutional authority to release state-law causes of action against debtor management and non-debtor entities.<sup>34</sup> Indeed, it has been the U.S. Trustee's position that where, as here, third parties whose claims are being released did not receive notice of the releases and had no way of knowing, based on the applicable plan's language, what claims were extinguished, third-party releases are contrary to law.<sup>35</sup> This position comports with Fifth Circuit case law, which makes clear that releases must be consensual, and that the released party must make a substantial contribution in exchange for any release.

As a result of the release and exculpation provisions of the Plan, employees and third-party investors in entities managed by the Debtor who are harmed by actions taken by the Debtor and its management in bankruptcy are barred from asserting their claims without prior Bankruptcy Court approval. Those third parties' claims are barred notwithstanding that they were not notified of the releases and have never been given any information with which to evaluate their potential claims (as mentioned, the Debtor has not disclosed several major assets sales, nor does the Plan require the Debtor to disclose post-confirmation asset sales). Conversely, the releases insulate claims purchasers from the risk of potential actions by investors in funds managed by the Debtor (for breach of fiduciary duty, diminution in value, or otherwise). These releases are directly at odds with investors' expectations and the written documents delivered to and approved by investors when they invest in managed funds—i.e., that fund managers will act in a fiduciary capacity to maximize investors' returns and that investors will have recourse for any failure to do so.

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<sup>31</sup> 584 F.3d 229 (5th Cir. 2009).

<sup>32</sup> The Plan created a Litigation Sub-Trust to be managed by a Litigation Trustee, whose sole mandate is to file lawsuits in an effort to realize additional value for the estate.

<sup>33</sup> See Memorandum of Law in Support of United States Trustee's Expedited Motion for Stay of Confirmation Order, *In re Purdue Pharma, L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.), Doc. 3778 at 17-25.

<sup>34</sup> *Id.* at 26-28.

<sup>35</sup> See *id.* at 22.

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As an example, the Court approved the settlement of UBS's claim against the Debtor and two funds managed by the Debtor (collectively referred to as "MultiStrat"). Pursuant to that settlement, MultiStrat agreed to pay UBS \$18.5 million. But the settlement made no sense for several reasons. First, Highland owns approximately 48% of MultiStrat, so causing MultiStrat to make such a substantial payment to settle a claim in Highland's bankruptcy necessarily negatively impacted its other non-Debtor investors. Second, in its lawsuit, UBS alleged that MultiStrat wrongfully received a \$6 million payment, but MultiStrat paid more than three times this amount to settle allegations against it—a deal that made little economic sense. Finally, as part of the settlement, MultiStrat represented that it was advised by "independent legal counsel" in the negotiation of the settlement, a representation that was patently untrue.<sup>36</sup> In reality, the only legal counsel advising MultiStrat was the Debtor's counsel, who had economic incentives to broker the deal in a manner that benefited the Debtor rather than MultiStrat and its investors.<sup>37</sup> If (as it seems) that representation and/or the terms of the UBS/MultiStrat settlement unfairly impacted MultiStrat's investors, they now have no recourse against the Debtor. The release and exculpation provisions in Highland's Plan do not afford third parties any meaningful recourse, even when they are negatively impacted by misrepresentations of the type contained in the UBS/MultiStrat settlement or when their interests are impaired by fund managers' failure to obtain fairness opinions to resolve conflicts of interest.

### **Bankruptcy Proceedings Are Used As an End-Run Around Applicable Legal Duties**

The UBS deal is but one example of how Highland's bankruptcy proceedings, including the settlement of claims and claims trading that occurred, seemingly provided a safe harbor for violations of multiple state and federal laws. For example, the Investment Advisors Act of 1940 requires registered investment advisors like the Debtor to act as fiduciaries of the funds that they manage. Indeed, the Act imposes an "affirmative duty of 'utmost good faith' and full and fair disclosure of material facts" as part of advisors' duties of loyalty and care to investors. See 17 C.F.R. Part 275. Adherence to these duties means that investment advisors cannot buy securities for their account prior to buying them for a client, cannot make trades that may result in higher commissions for the advisor or their investment firm, and cannot trade using material, non-public information. In addition, investment advisors must ensure that they provide investors with full and accurate information regarding the assets managed.

State blue sky laws similarly prohibit firms holding themselves out as investment advisors from breaching these core fiduciary duties to investors. For example, the Texas Securities Act prohibits any registered investment advisor from trading on material, non-public information. The Act also conveys a private right of action to investors harmed by breaches of an investment advisor's fiduciary duties.

As explained above, Highland executed numerous transactions during its bankruptcy that may have violated the Investment Advisors Act and state blue sky laws. Among other things:

- Highland facilitated the purchase of HarbourVest's interest in HCLOF (placing that interest in an SPE designated by the Debtor) without disclosing the true value of the interest and without first offering it to other investors in the fund;

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<sup>36</sup> See Doc. 2389 (Order Approving Debtor's Settlement With UBS Securities LLC and UBS AG London Branch) at Ex. 1, §§ 1(b), 11; see Appendix, p. A-57.

<sup>37</sup> The Court's order approving the UBS settlement is under appeal in part based on MultiStrat's lack of independent legal counsel.

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- Highland concealed the estate's true value from investors in its managed funds, making it impossible for those investors to fairly evaluate the estate or its assets during bankruptcy;
- Highland facilitated the settlement of UBS's claim by causing MultiStrat, a non-Debtor managed entity, to pay \$18.5 million to the Debtor, to the detriment of MultiStrat's investors; and
- Highland and its CEO/CRO, Mr. Seery, brokered deals between three of four Creditors' Committee members and Farallon and Stonehill—deals that made no sense unless Farallon and Stonehill were supplied material, non-public information regarding the true value of the estate.

In short, Mr. Seery effectuated trades that seemingly lined his own pockets, in transactions that we believe detrimentally impacted investors in the Debtor's managed funds.

### CONCLUSION

The Highland bankruptcy is an example of the abuses that can occur if the Bankruptcy Code and Bankruptcy Rules are not enforced and are allowed to be manipulated, and if federal law enforcement and federal lawmakers abdicate their responsibilities. Bankruptcy should not be a safe haven for perjury, breaches of fiduciary duty, and insider trading, with a plan containing third-party releases and sweeping exculpation sweeping everything under the rug. Nor should it be an avenue for opportunistic venturers to prey upon companies, their investors, and their creditors to the detriment of third-party stakeholders and the bankruptcy estate. My clients and I join Mr. Draper in encouraging your office to investigate, fight, and ultimately eliminate this type of abuse, now and in the future.

Best regards,

MUNSCH HARDT KOPF & HARR, P.C.

By: 

\_\_\_\_\_  
Davor Rukavina, Esq.

DR:pdm

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## Appendix

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Debtor Protocols [Doc. 466-1]

**I. Definitions**

- A. “Court” means the United States Bankruptcy Court for the Northern District of Texas.
- B. “NAV” means (A) with respect to an entity that is not a CLO, the value of such entity’s assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO’s gross assets less expenses calculated as of the quarter end prior to any Transaction.
- C. “Non-Discretionary Account” means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.
- D. “Related Entity” means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any “non-statutory” insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in Schedule B hereto (the “Related Entities Listing”); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor’s cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).
- E. “Stage 1” means the time period from the date of execution of a term sheet incorporating the protocols contained below the (“Term Sheet”) by all applicable parties until approval of the Term Sheet by the Court.
- F. “Stage 2” means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.
- G. “Stage 3” means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.
- H. “Transaction” means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

- I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.
- J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.
- K. "Specified Entity" means any of the following entities: ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

**II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners**

- A. **Covered Entities:** N/A (See entities above).
- B. **Operating Requirements**
  - 1. Ordinary Course Transactions do not require Court approval (All Stages).
    - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
    - b) Stage 3: ordinary course determined by the Debtor.
  - 2. Related Entity Transactions
    - a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
    - b) Stage 3:
      - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

- a) Except as set forth in (b) and (c) below, Transactions in excess of \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.
- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

**III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)**

- A. **Covered Entities:** See Schedule A hereto. Schedule A includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).<sup>1</sup>
- B. **Operating Requirements**
  1. Ordinary Course Transactions do not require Court approval (All Stages).
    - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
    - b) Stage 3: ordinary course determined by the Debtor.
  2. Related Entity Transactions

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<sup>1</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

- a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - b) Stage 3:
    - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
    - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.
3. **Third Party Transactions (All Stages)**
- a) Except as set forth in (b) and (c) below, Transactions in excess of \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
  - c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.
- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

**IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest**

- A. **Covered Entities:** See Schedule A hereto. Schedule A includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.<sup>2</sup>
- B. **Operating Requirements**
1. Ordinary Course Transactions do not require Court approval (All Stages).
    - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
    - b) Stage 3: ordinary course determined by the Debtor.
  2. Related Entity Transactions
    - a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
    - b) Stage 3:
      - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
      - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.
  3. Third Party Transactions (All Stages):
    - a) Except (x) as set forth in (b) and (c) below and (y) for any Transaction involving a Specified Entity and the sale or purchase by such Specified Entity of an asset that is not an obligation or security issued or guaranteed by any of the Debtor, a Related Entity or a fund, account, portfolio company owned, controlled or managed by the Debtor or a Related Entity, where such Transaction is effected in compliance with the collateral management agreement to which such Specified Entity is party, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) \$3,000,000 requires five business days advance notice to

<sup>2</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category. Such reports will include Transactions involving a Specified Entity unless the Debtor is prohibited from doing so under applicable law or regulation or any agreement governing the Debtor's relationship with such Specified Entity.

V. **Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest**

- A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.<sup>3</sup>
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

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<sup>3</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

**VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest**

- A. Covered Entities: See Schedule A hereto. Schedule A includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.<sup>4</sup>
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

**VII. Transactions involving Non-Discretionary Accounts**

- A. Covered Entities: See Schedule A hereto. Schedule A includes or will include all non-discretionary accounts.<sup>5</sup>
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

**VIII. Additional Reporting Requirements – All Stages (to the extent applicable)**

- A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.
- B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

**IX. Shared Services**

- A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.
- B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

<sup>4</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

<sup>5</sup> The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

**X. Representations and Warranties**

- A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.
- B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.
- C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

**Schedule A<sup>6</sup>**

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
  - a) Rockwall II CDO Ltd.
  - b) Grayson CLO Ltd.
  - c) Eastland CLO Ltd.
  - d) Westchester CLO, Ltd.
  - e) Brentwood CLO Ltd.
  - f) Greenbriar CLO Ltd.
  - g) Highland Park CDO Ltd.
  - h) Liberty CLO Ltd.
  - i) Gleneagles CLO Ltd.
  - j) Stratford CLO Ltd.
  - k) Jasper CLO Ltd.
  - l) Rockwall DCO Ltd.
  - m) Red River CLO Ltd.
  - n) Hi V CLO Ltd.
  - o) Valhalla CLO Ltd.
  - p) Aberdeen CLO Ltd.
  - q) South Fork CLO Ltd.
  - r) Legacy CLO Ltd.
  - s) Pam Capital
  - t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

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<sup>6</sup> NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund (“Korean Fund”)
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

**Schedule B**

**Related Entities Listing (other than natural persons)**

**Schedule C**

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

Seery Jan. 29, 2021 Testimony

Page 1

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

4 -----)

5 In Re: Chapter 11  
6 HIGHLAND CAPITAL Case No.  
7 MANAGEMENT, LP, 19-34054-SGJ 11

8

9 Debtor

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13 REMOTE DEPOSITION OF JAMES P. SEERY, JR.

14 January 29, 2021

15 10:11 a.m. EST

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24 Reported by:  
Debra Stevens, RPR-CRR  
JOB NO. 189212

25

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

**In Re: Highland Capital Management, L.P**

	§	Case No. <b>19-34054 SGJ 11</b>
<b>Dugaboy Investment Trust and Hunter Mountain Investment Trust, Appellant</b>	§	
vs.	§	
<b>Highland Capital Management, L.P., et al</b>	§	<b>3:24-CV-1531-X</b>
Appellee	§	

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

**Volume 5  
APPELLANT RECORD**



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

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

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

Vol 1 **II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

- 00000 | 1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

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

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

<p>1 January 29, 2021                  2 9:00 a.m. EST                  3                  4 Remote Deposition of JAMES P.                  5 SEERY, JR., held via Zoom                  6 conference, before Debra Stevens,                  7 RPR/CRR and a Notary Public of the                  8 State of New York.                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p>Page 2</p>	<p>1 REMOTE APPEARANCES:                  2                  3 Heller, Draper, Hayden, Patrick, &amp; Horn                  4 Attorneys for The Dugaboy Investment                  5 Trust and The Get Good Trust                  6 650 Poydras Street                  7 New Orleans, Louisiana 70130                  8                  9                  10 BY: DOUGLAS DRAPER, ESQ                  11                  12                  13 PACHULSKI STANG ZIEHL &amp; JONES                  14 For the Debtor and the Witness Herein                  15 780 Third Avenue                  16 New York, New York 10017                  17 BY: JOHN MORRIS, ESQ.                  18 JEFFREY POMERANTZ, ESQ.                  19 GREGORY DEMO, ESQ.                  20 IRA KHARASCH, ESQ.                  21                  22                  23                  24 (Continued)                  25</p>	<p>Page 3</p>
<p>1 REMOTE APPEARANCES: (Continued)                  2                  3 LATHAM &amp; WATKINS                  4 Attorneys for UBS                  5 885 Third Avenue                  6 New York, New York 10022                  7 BY: SHANNON McLAUGHLIN, ESQ.                  8                  9 JENNER &amp; BLOCK                  10 Attorneys for Redeemer Committee of                  11 Highland Crusader Fund                  12 919 Third Avenue                  13 New York, New York 10022                  14 BY: MARC B. HANKIN, ESQ.                  15                  16 SIDLEY AUSTIN                  17 Attorneys for Creditors' Committee                  18 2021 McKinney Avenue                  19 Dallas, Texas 75201                  20 BY: PENNY REID, ESQ.                  21 MATTHEW CLEMENTE, ESQ.                  22 PAIGE MONTGOMERY, ESQ.                  23                  24 (Continued)                  25</p>	<p>Page 4</p>	<p>1 REMOTE APPEARANCES: (Continued)                  2 KING &amp; SPALDING                  3 Attorneys for Highland CLO Funding, Ltd.                  4 500 West 2nd Street                  5 Austin, Texas 78701                  6 BY: REBECCA MATSUMURA, ESQ.                  7                  8 K&amp;L GATES                  9 Attorneys for Highland Capital Management                  10 Fund Advisors, L.P., et al.:                  11 4350 Lassiter at North Hills                  12 Avenue                  13 Raleigh, North Carolina 27609                  14 BY: EMILY MATHER, ESQ.                  15                  16 MUNSCH HARDT KOPF &amp; HARR                  17 Attorneys for Defendants Highland Capital                  18 Management Fund Advisors, LP; NexPoint                  19 Advisors, LP; Highland Income Fund;                  20 NexPoint Strategic Opportunities Fund and                  21 NexPoint Capital, Inc.:                  22 500 N. Akard Street                  23 Dallas, Texas 75201-6659                  24 BY: DAVOR RUKAVINA, ESQ.                  25 (Continued)</p>	<p>Page 5</p>

<p style="text-align: right;">Page 6</p> <p>1 REMOTE APPEARANCES (Continued)</p> <p>2</p> <p>3 BONDS ELLIS EPPICH SCHAFFER JONES</p> <p>4 Attorneys for James Dondero,</p> <p>5 Party-in-Interest</p> <p>6 420 Throckmorton Street</p> <p>7</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: CLAY TAYLOR, ESQ.</p> <p>10 JOHN BONDS, ESQ.</p> <p>11 BRYAN ASSINK, ESQ.</p> <p>12</p> <p>13</p> <p>14 BAKER MCKENZIE</p> <p>15 Attorneys for Senior Employees</p> <p>16 1900 North Pearl Street</p> <p>17</p> <p>18 Dallas, Texas 75201</p> <p>19 BY: MICHELLE HARTMANN, ESQ.</p> <p>20 DEBRA DANDEREAU, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (Continued)</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 REMOTE APPEARANCES: (Continued)</p> <p>2</p> <p>3 WICK PHILLIPS</p> <p>4 Attorneys for NexPoint Real Estate</p> <p>5 Partners, NexPoint Real Estate Entities</p> <p>6 and NexBank</p> <p>7 100 Throckmorton Street</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: LAUREN DRAWHORN, ESQ.</p> <p>10</p> <p>11 ROSS &amp; SMITH</p> <p>12 Attorneys for Senior Employees, Scott</p> <p>13 Ellington, Isaac Leventon, Thomas Surgent,</p> <p>14 Frank Waterhouse</p> <p>15 700 N. Pearl Street</p> <p>16 Dallas, Texas 75201</p> <p>17 BY: FRANCES SMITH, ESQ.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 8</p> <p>1</p> <p>2 E X A M I N A T I O N S</p> <p>3 WITNESS PAGE</p> <p>4 JAMES SEERY</p> <p>5 By Mr. Draper 9</p> <p>6 By Mr. Taylor 75</p> <p>7 By Mr. Rukavina 165</p> <p>8 By Mr. Draper 217</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 EXHIBIT DESCRIPTION PAGE</p> <p>12 Exhibit 1 January 2021 Material 11</p> <p>13 Exhibit 2 Disclosure Statement 14</p> <p>14 Exhibit 3 Notice of Deposition 74</p> <p>15</p> <p>16 INFORMATION/PRODUCTION REQUESTS</p> <p>17 DESCRIPTION PAGE</p> <p>18 Subsidiary ledger showing note 22</p> <p>19 component versus hard asset 131</p> <p>20 component</p> <p>21 Amount of D&amp;O coverage for 131</p> <p>22 trustees</p> <p>23 Line item for D&amp;O insurance 133</p> <p>24</p> <p>25 MARKED FOR RULING</p> <p>PAGE LINE</p> <p>85 20</p>	<p style="text-align: right;">Page 9</p> <p>1</p> <p>2 COURT REPORTER: My name is</p> <p>3 Debra Stevens, court reporter for TSG</p> <p>4 Reporting and notary public of the</p> <p>5 State of New York. Due to the</p> <p>6 severity of the COVID-19 pandemic and</p> <p>7 following the practice of social</p> <p>8 distancing, I will not be in the same</p> <p>9 room with the witness but will report</p> <p>10 this deposition remotely and will</p> <p>11 swear the witness in remotely. If any</p> <p>12 party has any objection, please so</p> <p>13 state before we proceed.</p> <p>14 Whereupon,</p> <p>15 J A M E S S E E R Y,</p> <p>16 having been first duly sworn/affirmed,</p> <p>17 was examined and testified as follows:</p> <p>18 EXAMINATION BY</p> <p>19 MR. DRAPER:</p> <p>20 Q. Mr. Seery, my name is Douglas</p> <p>21 Draper, representing the Dugaboy Trust. I</p> <p>22 have series of questions today in</p> <p>23 connection with the 30(b) Notice that we</p> <p>24 filed. The first question I have for you,</p> <p>25 have you seen the Notice of Deposition</p>

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1 J. SEERY

2 the screen, please?

3 A. Page what?

4 Q. I think it is page 174.

5 A. Of the PDF or of the document?

6 Q. Of the disclosure statement that

7 was filed. It is up on the screen right

8 now.

9 COURT REPORTER: Do you intend

10 this as another exhibit for today's

11 deposition?

12 MR. DRAPER: We'll mark this

13 Exhibit 2.

14 (So marked for identification as

15 Seery Exhibit 2.)

16 Q. If you look to the recovery to

17 Class 8 creditors in the November 2020

18 disclosure statement was a recovery of

19 87.44 percent?

20 A. That actually says the percent

21 distribution to general unsecured

22 creditors was 87.44 percent. Yes.

23 Q. And in the new document that was

24 filed, given to us yesterday, the recovery

25 is 62.5 percent?

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1 J. SEERY

2 anybody else?

3 A. I said Mr. O'Cherty.

4 Q. In looking at the two elements,

5 and what I have asked you to look at is

6 the claims pool. If you look at the

7 November disclosure statement, if you look

8 down Class 8, unsecured claims?

9 A. Yes.

10 Q. You have 176,000 roughly?

11 A. Million.

12 Q. 176 million. I am sorry. And

13 the number in the new document is 313

14 million?

15 A. Correct.

16 Q. What accounts for the

17 difference?

18 A. An increase in claims.

19 Q. When did those increases occur?

20 Were they yesterday? A month ago? Two

21 months ago?

22 A. Over the last couple months.

23 Q. So in fact over the last couple

24 months you knew in fact that the recovery

25 in the November disclosure statement was

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1 J. SEERY

2 A. It says the percent distribution

3 to general unsecured creditors is

4 62.14 percent.

5 Q. Have you communicated the

6 reduced recovery to anybody prior to the

7 date -- to yesterday?

8 MR. MORRIS: Objection to the

9 form of the question.

10 A. I believe generally, yes. I

11 don't know if we have a specific number,

12 but generally yes.

13 Q. And would that be members of the

14 Creditors' Committee who you gave that

15 information to?

16 A. Yes.

17 Q. Did you give it to anybody other

18 than members of the Creditors' Committee?

19 A. Yes.

20 Q. Who?

21 A. HarbourVest.

22 Q. And when was that?

23 A. Within the last two months.

24 Q. You did not feel the need to

25 communicate the change in recovery to

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1 J. SEERY

2 not accurate?

3 A. Yes. We secretly disclosed it

4 to the Bankruptcy Court in open court

5 hearings.

6 Q. But you never did bother to

7 calculate the reduced recovery; you just

8 increased --

9 (Reporter interruption.)

10 Q. You just advised as to the

11 increased claims pool. Correct?

12 MR. MORRIS: Objection to the

13 form of the question.

14 A. I don't understand your

15 question.

16 Q. What I am trying to get at is,

17 as you increase the claims pool, the

18 recovery reduces. Correct?

19 A. No. That is not how a fraction

20 works.

21 Q. Well, if the denominator

22 increases, doesn't the recovery ultimately

23 decrease if --

24 A. No.

25 Q. -- if the numerator stays the

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1 J. SEERY

2 were amended without consideration a few

3 years ago. So, for our purposes we didn't

4 make the assumption, which I am sure will

5 happen, a fraudulent conveyance claim on

6 those notes, that a fraudulent conveyance

7 action would be brought. We just assumed

8 that we'd have to discount the notes

9 heavily to sell them because nobody would

10 respect the ability of the counterparties

11 to fairly pay.

12 Q. And the same discount was

13 applied in the liquidation analysis to

14 those notes?

15 A. Yes.

16 Q. Now --

17 A. The difference -- there would be

18 a difference, though, because they would

19 pay for a while because they wouldn't want

20 to accelerate them. So there would be

21 some collections on the notes for P and I.

22 Q. But in fact as of January you

23 have accelerated those notes?

24 A. Just one of them, I believe.

25 Q. Which note was that?

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1 J. SEERY

2 you whether they are included in the asset

3 portion of your \$257 million number, all

4 right? Mr. Morris didn't want me to go

5 into specific asset value, and I don't

6 intend to do that.

7 The first question I have for

8 you is, the equity in Trustway Highland

9 Holdings, is that included in the

10 \$257 million number?

11 A. There is no such entity.

12 Q. Then I will do it in a different

13 way. In connection with the sale of the

14 hard assets, what assets are included in

15 there specifically?

16 A. Off the top of my head -- it is

17 all of the assets, but it includes

18 Trustway Holdings and all the value that

19 flows up from Trustway Holdings. It

20 includes Targa and all the value that

21 flows up from Targa. It includes CCS

22 Medical and all the value that would flow

23 to the Debtor from CCS Medical. It

24 includes Cornerstone and all the value

25 that would flow from Cornerstone. It

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1 J. SEERY

2 A. NexPoint, I said. They

3 defaulted on the note and we accelerated

4 it.

5 Q. So there is no need to file a

6 fraudulent conveyance suit with respect to

7 that note. Correct, Mr. Seery?

8 MR. MORRIS: Objection to the

9 form of the question.

10 A. Disagree. Since it was likely

11 intentional fraud, there may be other

12 recoveries on it. But to collect on the

13 note, no.

14 Q. My question was with respect to

15 that note. Since you have accelerated it,

16 you don't need to deal with the issue of

17 when it's due?

18 MR. MORRIS: Objection to the

19 form of the question.

20 A. That wasn't your question. But

21 to that question, yes, I don't need to

22 deal with when it's due.

23 Q. Let me go over certain assets.

24 I am not going to ask you for the

25 valuation of them but I am going to ask

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1 J. SEERY

2 includes any other securities and all the

3 value that would flow from Cornerstone.

4 It includes HCLOF and all the value that

5 would flow up from HCLOF. It includes

6 Korea and all the value that would flow up

7 from Korea.

8 There may be others off the top

9 of my head. I don't recall them. I don't

10 have a list in front of me.

11 Q. Now, with respect to those

12 assets, have you started the sale process

13 of those assets?

14 A. No. Well, each asset is

15 different. So, the answer is, with

16 respect to any securities, we do seek to

17 sell those regularly and we do seek to

18 monetize those assets where we can

19 depending on whether there is a

20 restriction or not and whether there is

21 liquidity in the market.

22 With respect to the PE assets or

23 the companies I described -- Targa, CCS,

24 Cornerstone, JHT -- we have not --

25 Trustway. We have not sought to sell

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1 J. SEERY

2 A. I don't recall the specific

3 limitation on the trust. But if there was

4 a reason to hold on to the asset, if there

5 is a limitation, we can seek an extension.

6 Q. Let me ask a question. With

7 respect to these businesses, the Debtor

8 merely owns an equity interest in them.

9 Correct?

10 A. Which business?

11 Q. The ones you have identified as

12 operating businesses earlier?

13 A. It depends on the business.

14 Q. Well, let me -- again, let's try

15 to be specific. With respect to SSP, it

16 was your position that you did not need to

17 get court approval for the sale. Correct?

18 A. That's correct.

19 Q. Which one of the operating

20 businesses that are here, that you have

21 identified, do you need court authority

22 for a sale?

23 MR. MORRIS: Objection to the

24 form of the question.

25 A. Each of the businesses will be a

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1 J. SEERY

2 or determined the discount that has been

3 placed between the two, plan analysis

4 versus liquidation analysis?

5 MR. MORRIS: Objection to form

6 of the question.

7 A. To which document are you

8 referring?

9 Q. Both the June -- the January and

10 the November analysis has a different

11 estimated proceeds for monetization for

12 the plan analysis versus the liquidation

13 analysis. Do you see that?

14 A. Yes.

15 Q. And there is a note under there.

16 "Assumes Chapter 7 trustee will not be

17 able to achieve the same sales proceeds as

18 Claimant trustee."

19 A. I see that, yes.

20 Q. Do you see that note?

21 A. Yes.

22 Q. Who arrived at that discount?

23 A. I did.

24 Q. What percentage did you use?

25 A. Depended on the asset. Each one

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1 J. SEERY

2 different analysis that we'll undertake

3 with bankruptcy counsel to determine what

4 we would need depending on what is

5 going to happen and what the restrictions

6 either under the code are or under the

7 plan.

8 Q. Is there anything that would

9 stop you from selling these businesses if

10 the Chapter 7 went on for a year or two

11 years?

12 MR. MORRIS: Objection to form

13 of the question.

14 A. Is there anything that would

15 stop me? We'd have to follow the

16 strictures of the code and the protocols,

17 but there would be no prohibition -- let

18 me know, please.

19 There would be no prohibition

20 that I am aware of.

21 Q. Now, in connection with your

22 differential between the liquidation of

23 what I will call the operating businesses

24 under the liquidation analysis and the

25 plan analysis, who arrived at the discount

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1 J. SEERY

2 is different.

3 Q. Is the discount a function of

4 capability of a trustee versus your

5 capability, or is the discount a function

6 of timing?

7 MR. MORRIS: Objection to form.

8 A. It could be a combination.

9 Q. So, let's -- let me walk through

10 this. Your plan analysis has an

11 assumption that everything is sold by

12 December 2022. Correct?

13 A. Correct.

14 Q. And the valuations that you have

15 used here for the monetization assume a

16 sale between -- a sale prior to December

17 of 2022. Correct?

18 A. Sorry. I don't quite understand

19 your question.

20 Q. The 257 number, and then let's

21 take out the notes. Let's use the 210

22 number.

23 MR. MORRIS: Can we put the

24 document back on the screen, please?

25 Sorry, Douglas, to interrupt, but it

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1 J. SEERY  
 2 would be helpful.  
 3 MR. DRAPER: That is fine, John.  
 4 (Pause.)  
 5 MR. MORRIS: Thank you very  
 6 much.  
 7 Q. Mr. Seery, do you see the 257?  
 8 A. In the one from yesterday?  
 9 Q. Yes.  
 10 A. Second line, 257,941. Yes.  
 11 Q. That assumes a monetization of  
 12 all assets by December of 2022?  
 13 A. Correct.  
 14 Q. And so everything has been sold  
 15 by that time; correct?  
 16 A. Yes.  
 17 Q. So, what I am trying to get at  
 18 is, there is both the capability between  
 19 you and a trustee, and then the second  
 20 issue is timing. So, what discount was  
 21 put on for timing, Mr. Seery, between when  
 22 a trustee would sell it versus when you  
 23 would sell it?  
 24 MR. MORRIS: Objection.  
 25 Q. What is the percentage you

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1 J. SEERY  
 2 as capable as you are?  
 3 MR. MORRIS: Objection to the  
 4 form of the question.  
 5 A. I don't know.  
 6 Q. Is there anybody as capable as  
 7 you are?  
 8 MR. MORRIS: Objection to the  
 9 form of the question.  
 10 A. Certainly.  
 11 Q. And they could be hired.  
 12 Correct?  
 13 A. Perhaps. I don't know.  
 14 Q. And if you go back to the  
 15 November 2020 liquidation analysis versus  
 16 plan analysis, it is also the same note  
 17 about that a trustee would bring less, and  
 18 there is the same sort of discount between  
 19 the estimated proceeds under the plan and  
 20 under the liquidation analysis.  
 21 MR. MORRIS: If that is a  
 22 question, I object.  
 23 Q. Is that correct, Mr. Seery,  
 24 looking at the document?  
 25 A. There are discounts, yes.

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1 J. SEERY  
 2 applied?  
 3 A. Each of the assets is different.  
 4 Q. Is there a general discount that  
 5 you used?  
 6 A. Not a general discount, no. We  
 7 looked at each individual asset and went  
 8 through and made an assessment.  
 9 Q. Did you apply a discount for  
 10 your capability versus the capability of a  
 11 trustee?  
 12 A. No.  
 13 Q. So a trustee would be as capable  
 14 as you are in monetizing these assets?  
 15 MR. MORRIS: Objection to the  
 16 form of the question.  
 17 Q. Excuse me? The answer is?  
 18 A. The answer is maybe.  
 19 Q. Couldn't a trustee hire somebody  
 20 as capable as you are?  
 21 MR. MORRIS: Objection to the  
 22 form of the question.  
 23 A. Perhaps.  
 24 Q. Sir, that is a yes or no  
 25 question. Could the trustee hire somebody

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1 J. SEERY  
 2 Q. Again, the discounts are applied  
 3 for timing and capability?  
 4 A. Yes.  
 5 Q. Now, in looking at the November  
 6 plan analysis number of \$190 million and  
 7 the January number of \$257 million, what  
 8 accounts for the increase between the two  
 9 dates? What assets specifically?  
 10 A. There are a number of assets.  
 11 Firstly, the HCLOF assets are added.  
 12 Q. How much are those?  
 13 A. Approximately 22 and a half  
 14 million dollars.  
 15 Q. Okay.  
 16 A. Secondly, there is a significant  
 17 increase in the value of certain of the  
 18 assets over this time period.  
 19 Q. Which assets, Mr. Seery?  
 20 A. There are a number. They  
 21 include MGM stock, they include Trustway,  
 22 they include Targa.  
 23 Q. And what is the percentage  
 24 increase from November to January,  
 25 November of 2020 to January of 2021?

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1 J. SEERY

2 A. Do you mean what is the

3 percentage increase from 190 to 257?

4 Q. No. You just identified three

5 assets. MGM stock, we can go look at the

6 exchange and figure out what the price

7 increase is; correct?

8 A. No.

9 Q. Why not? Is the MGM stock

10 publicly traded?

11 A. Yes. It doesn't trade on --

12 Q. Excuse me?

13 A. It doesn't trade on an exchange.

14 Q. Is there a public market for the

15 MGM stock that we could calculate the

16 increase?

17 A. There is a semipublic market;

18 yes.

19 Q. So it is a number that is

20 readily available between the two dates?

21 A. It's available.

22 Q. Now, you identified Targa and

23 Trustway. Correct?

24 A. Yes.

25 Q. Those are not readily available

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1 J. SEERY

2 Q. And if I understand what you

3 just said, it is that the Houlihan Lokey

4 valuation for those two businesses showed

5 a significant increase between November of

6 2020 and January of 2021?

7 MR. MORRIS: Objection to form

8 of the question.

9 A. I didn't say that.

10 Q. I am trying to account for the

11 increase between the two dates, and you

12 identified three assets. You identified

13 MGM stock, which has, I can guess, as you

14 have said, a readily ascertainable value.

15 Then you identified two others that the

16 valuation is based upon something Houlihan

17 Lokey provided you. Correct?

18 A. I gave you three examples. I

19 never said "readily." That is your word,

20 not mine. And I didn't say that Houlihan

21 had a significant change in their

22 valuation.

23 Q. So let's now go back to the

24 question. There is an increase in value

25 from November 24th of 2020 to January 28th

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1 J. SEERY

2 markets; correct?

3 A. No.

4 Q. Those are operating businesses?

5 A. Correct.

6 Q. Who provided the valuation for

7 the November 2020 liquidation analysis?

8 A. We use a combination of the

9 value that we get from Houlihan Lokey for

10 mark purposes and then we adjust it for

11 plan purposes.

12 Q. And the adjustment was up or

13 down?

14 A. When?

15 Q. For both November and January.

16 You got a number from Houlihan Lokey. You

17 adjusted it. Did you adjust it up or did

18 you adjust it down?

19 MR. MORRIS: Objection to form

20 of the question.

21 A. I believe that for November we

22 adjusted it down, and for January we

23 adjusted it down. I don't recall off the

24 top of my head but I believe both of them

25 were adjusted down.

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1 J. SEERY

2 of 2021, the magnitude being roughly 60

3 some odd million dollars. Correct?

4 A. Correct.

5 Q. We can account for \$22 million

6 of it easily, right?

7 MR. MORRIS: Objection to form.

8 A. Correct.

9 Q. That is the HarbourWest

10 settlement, so that leaves roughly

11 \$40 million unaccounted for?

12 MR. MORRIS: Objection to the

13 form of the question if that is a

14 question. It is accounted for.

15 Q. What makes up that difference,

16 Mr. Seery?

17 A. A change in the plan value of

18 the assets.

19 Q. Okay. Which assets? Let's sort

20 of go back to where we were.

21 A. There are numerous assets in the

22 plan formulation. I gave you three

23 examples of the operating businesses. The

24 securities, I believe, have increased in

25 value since the plan, so those would go up

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1 J. SEERY  
2 for one. On the operating businesses, we  
3 looked at each of them and made an  
4 assessment based upon where the market is  
5 and what we believe the values are, and we  
6 have moved those valuations.  
7 Q. Let me look at some numbers  
8 again. In the liquidation analysis in  
9 November of 2020, the liquidation value is  
10 \$149 million. Correct?  
11 A. Yes.  
12 Q. And in the liquidation analysis  
13 in January of 2021, you have \$191 million?  
14 A. Yes.  
15 Q. You see that number. So there  
16 is \$51 million there, right?  
17 A. No.  
18 Q. What is the difference between  
19 191 and -- sorry. My math may be a little  
20 off. What is the difference between the  
21 two numbers, Mr. Seery?  
22 A. Your math is off.  
23 Q. Sorry. It is 41 million?  
24 A. Correct.  
25 Q. \$22 million of that is the

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1 J. SEERY  
2 of the question.  
3 Q. Mr. Seery, yes or no?  
4 A. I said no.  
5 Q. What is that based on, then?  
6 A. The person's ability to assess  
7 the market and timing.  
8 Q. Okay. And again, couldn't a  
9 trustee hire somebody as capable as you to  
10 both, A, assess the market and, B, make a  
11 determination as to when to sell?  
12 MR. MORRIS: Objection to form  
13 of the question.  
14 A. I suppose a trustee could.  
15 Q. And there are better people or  
16 people equally or better than you at  
17 assessing a market. Correct?  
18 A. Yes.  
19 MR. MORRIS: Objection to form  
20 of the question.  
21 Q. So, again, let's go back to  
22 that. We have accounted for, out of  
23 \$41 million where the liquidation analysis  
24 increases between the two dates,  
25 \$22 million of it. That leaves

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1 J. SEERY  
2 HarbourVest settlement, right?  
3 A. I believe that's correct.  
4 Q. Is that fair, Mr. Seery?  
5 A. I believe that is correct, yes.  
6 Q. And part of that differential  
7 are publicly traded or ascertainable  
8 securities. Correct?  
9 A. Yes.  
10 Q. And basically you can get, or  
11 under the plan analysis or trustee  
12 analysis, if it is a marketable security  
13 or where there is a market, the  
14 liquidation number should be the same for  
15 both. Is that fair?  
16 A. No.  
17 Q. And why not?  
18 A. We might have a different price  
19 target for a particular security than the  
20 current trading value.  
21 Q. I understand that, but I mean  
22 that is based upon the capability of the  
23 person making the decision as to when to  
24 sell. Correct?  
25 MR. MORRIS: Objection to form

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1 J. SEERY  
2 \$18 million. How much of that is publicly  
3 traded or ascertainable assets versus  
4 operating businesses?  
5 A. I don't know off the top of my  
6 head the percentages.  
7 Q. All right. The same question  
8 for the plan analysis where you have the  
9 differential between the November number  
10 and the January number. How much of it is  
11 marketable securities versus an operating  
12 business?  
13 A. I don't recall off the top of my  
14 head.  
15 MR. DRAPER: Let me take a  
16 few-minute break. Can we take a  
17 ten-minute break here?  
18 THE WITNESS: Sure.  
19 (Recess.)  
20 BY MR. DRAPER:  
21 Q. Mr. Seery, what I am going to  
22 show you and what I would ask you to look  
23 at is in the note E, in the statement of  
24 assumptions for the November 2020  
25 disclosure statement. It discusses fixed

Sale of Assets of Affiliates or Controlled Entities

<b>Asset</b>	<b>Sales Price</b>
Structural Steel Products	\$50 million
Life Settlements	\$35 million
OmniMax	\$50 million
Targa	\$37 million

- These assets were sold over the contemporaneous objections of James Dondero, who was the Portfolio Manager and key-man on the funds.
- Mr. Seery admitted<sup>1</sup> that he must comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Protocols for the sale of major assets of the estate. We believe that a competitive bid process and court approval should have been required for the sale of each of these assets (as was done for the sale of the building at 2817 Maple Ave. [a \$9 million asset] and the sale of the interest in PetroCap [a \$3 million asset]).

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<sup>1</sup> See Mr. Seery's Jan. 29, 2021 deposition testimony, Appendix p. A-20.

20 Largest Unsecured Creditors

<b>Name of Claimant</b>	<b>Allowed Class 8</b>	<b>Allowed Class 9</b>
Redeemer Committee of the Highland Crusader Fund	\$136,696,610.00	
UBS AG, London Branch and UBS Securities LLC	\$65,000,000.00	\$60,000,000
HarbourVest entities	\$45,000,000.00	\$35,000,000
Acis Capital Management, L.P. and Acis Capital Management GP, LLC	\$23,000,000.00	
CLO Holdco Ltd	\$11,340,751.26	
Patrick Daugherty	\$8,250,000.00	\$2,750,000 (+\$750,000 cash payment on Effective Date of Plan)
Todd Travers (Claim based on unpaid bonus due for Feb 2009)	\$2,618,480.48	
McKool Smith PC	\$2,163,976.00	
Davis Deadman (Claim based on unpaid bonus due for Feb 2009)	\$1,749,836.44	
Jack Yang (Claim based on unpaid bonus due for Feb 2009)	\$1,731,813.00	
Paul Kauffman (Claim based on unpaid bonus due for Feb 2009)	\$1,715,369.73	
Kurtis Plumer (Claim based on unpaid bonus due for Feb 2009)	\$1,470,219.80	
Foley Gardere	\$1,446,136.66	
DLA Piper	\$1,318,730.36	
Brad Borud (Claim based on unpaid bonus due for Feb 2009)	\$1,252,250.00	
Stinson LLP (successor to Lackey Hershman LLP)	\$895,714.90	
Meta-E Discovery LLC	\$779,969.87	
Andrews Kurth LLP	\$677,075.65	
Markit WSO Corp	\$572,874.53	
Duff & Phelps, LLC	\$449,285.00	
Lynn Pinker Cox Hurst	\$436,538.06	
Joshua and Jennifer Terry	\$425,000.00	
Joshua Terry	\$355,000.00	
CPCM LLC (bought claims of certain former HCMLP employees)	Several million	
<b>TOTAL:</b>	<b>\$309,345,631.74</b>	<b>\$95,000,000</b>

Timeline of Relevant Events

Date	Description
10/29/2019	UCC appointed; members agree to fiduciary duties and not sell claims.
9/23/2020	Acis 9019 filed
9/23/2020	Redeemer 9019 filed
10/28/2020	Redeemer settlement approved
10/28/2020	Acis settlement approved
12/24/2020	HarbourVest 9019 filed
1/14/2021	Motion to appoint examiner filed
1/21/2021	HarbourVest settlement approved; transferred its interest in HCLOF to HCMLP assignee, valued at \$22 million per Seery
1/28/2021	Debtor discloses that it has reached an agreement in principle with UBS
2/3/2021	Failure to comply with Rule 2015.3 raised
2/24/2021	Plan confirmed
3/9/2021	Farallon Cap. Mgmt. forms "Muck Holdings LLC" in Delaware
3/15/2021	Debtor files Jan. '21 monthly operating report indicating assets of \$364 million, liabilities of \$335 million ( <b>inclusive of \$267,607,000 in Class 8 claims, but exclusive of any Class 9 claims</b> ), the last publicly filed summary of the Debtor's assets. The MOR states that no Class 9 distributions are anticipated at this time and Class 9 recoveries are not expected.
3/31/2021	UBS files friendly suit against HCMLP under seal
4/8/2021	Stonehill Cap. Mgmt. forms "Jessup Holdings LLC" in Delaware
4/15/2021	UBS 9019 filed
4/16/2021	Notice of Transfer of Claim - Acis to Muck (Farallon Capital)
4/29/2021	Motion to Compel Compliance with Rule 2015.3 Filed
4/30/2021	Notice of Transfer of Claim - Redeemer to Jessup (Stonehill Capital)
4/30/2021	Notice of Transfer of Claim - HarbourVest to Muck (Farallon Capital)
4/30/2021	Sale of Redeemer claim to Jessup (Stonehill Capital) "consummated"
5/27/2021	UBS settlement approved; included \$18.5 million in cash from Multi-Strat
6/14/2021	UBS dismisses appeal of Redeemer award
8/9/2021	Notice of Transfer of Claim - UBS to Jessup (Stonehill Capital)
8/9/2021	Notice of Transfer of Claim - UBS to Muck (Farallon Capital)

Critical unknown dates and information:

- The date on which Muck entered into agreements with HarbourVest and Acis to acquire their claims and what negative and affirmative covenants those agreements contained.
- The date on which Jessup entered into an agreement with the Redeemer Committee and the Crusader Fund to acquire their claim and what negative and affirmative covenants the agreement contained.
- The date on which the sales actually closed versus the date on which notice of the transfer was filed (i.e., did UCC members continue to serve on the committee after they had sold their claims).

Debtor's October 15, 2020 Liquidation Analysis [Doc. 1173-1]

	<b>Plan Analysis</b>	<b>Liquidation Analysis</b>
Estimated cash on hand at 12/31/2020	\$26,496	\$26,496
Estimated proceeds from monetization of assets [1][2]	198,662	154,618
Estimated expenses through final distribution [1][3]	(29,864)	(33,804)
<b>Total estimated \$ available for distribution</b>	<b>195,294</b>	<b>147,309</b>
Less: Claims paid in full		
Administrative claims [4]	(10,533)	(10,533)
Priority Tax/Settled Amount [10]	(1,237)	(1,237)
Class 1 – Jefferies Secured Claim	-	-
Class 2 – Frontier Secured Claim [5]	(5,560)	(5,560)
Class 3 – Priority non-tax claims [10]	(16)	(16)
Class 4 – Retained employee claims	-	-
Class 5 – Convenience claims [6][10]	(13,455)	-
Class 6 – Unpaid employee claims [7]	(2,955)	-
Subtotal	(33,756)	(17,346)
Estimated amount remaining for distribution to general unsecured claims	161,538	129,962
Class 5 – Convenience claims [8]	-	17,940
Class 6 – Unpaid employee claims	-	3,940
Class 7 – General unsecured claims [9]	174,609	174,609
Subtotal	174,609	196,489
% Distribution to general unsecured claims	92.51%	66.14%
Estimated amount remaining for distribution	-	-
Class 8 – Subordinated claims	<i>no distribution</i>	<i>no distribution</i>
Class 9 – Class B/C limited partnership interests	<i>no distribution</i>	<i>no distribution</i>
Class 10 – Class A limited partnership interests	<i>no distribution</i>	<i>no distribution</i>

Notable notations/disclosures in the Oct. 15, 2020 liquidation analysis include:

- Note [9]: General unsecured claims estimated using \$0 allowed claims for HarbourVest and UBS. Ultimately, those two creditors were awarded \$105 million of general unsecured claims and \$95 million of subordinated claims.

Updated Liquidation Analysis (Feb. 1, 2021)<sup>2</sup>

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020 [sic]	\$24,290	\$24,290
Estimated proceeds from monetization of assets [1][2]	257,941	191,946
Estimated expenses through final distribution [1][3]	(59,573)	(41,488)
<b>Total estimated \$ available for distribution</b>	<b>222,658</b>	<b>174,178</b>
Less: Claims paid in full		
Unclassified [4]	(1,080)	(1,080)
Administrative claims [5]	(10,574)	(10,574)
Class 1 – Jefferies Secured Claim	-	-
Class 2 – Frontier Secured Claim [6]	(5,781)	(5,781)
Class 3 – Other Secured Claims	(62)	(62)
Class 4 – Priority non-tax claims	(16)	(16)
Class 5 – Retained employee claims	-	-
Class 6 – PTO Claims [5]	-	-
Class 7 – Convenience claims [7][8]	(10,280)	-
<b>Subtotal</b>	<b>(27,793)</b>	<b>(17,514)</b>
Estimated amount remaining for distribution to general unsecured claims	194,865	157,235
% Distribution to Class 7 (Class 7 claims including in Class 8 in Liquidation scenario)	85.00%	0.00%
Class 8 – General unsecured claims [8] [10]	273,219	286,100
Subtotal	273,219	286,100
% Distribution to general unsecured claims	71.32%	54.96%
Estimated amount remaining for distribution	-	-
Class 9 – Subordinated claims	<i>no distribution</i>	<i>no distribution</i>
Class 10 – Class B/C limited partnership interests	<i>no distribution</i>	<i>no distribution</i>
Class 11 – Class A limited partnership interests	<i>no distribution</i>	<i>no distribution</i>

Notable notations/disclosures in the Feb. 1, 2021 liquidation analysis include:

- claim amounts in Class 8 assume \$0 for IFA and HM, \$50.0 million for UBS and \$45 million HV.
- Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets

<sup>2</sup> Doc. 1895.

Summary of Debtor’s January 31, 2021 Monthly Operating Report<sup>3</sup>

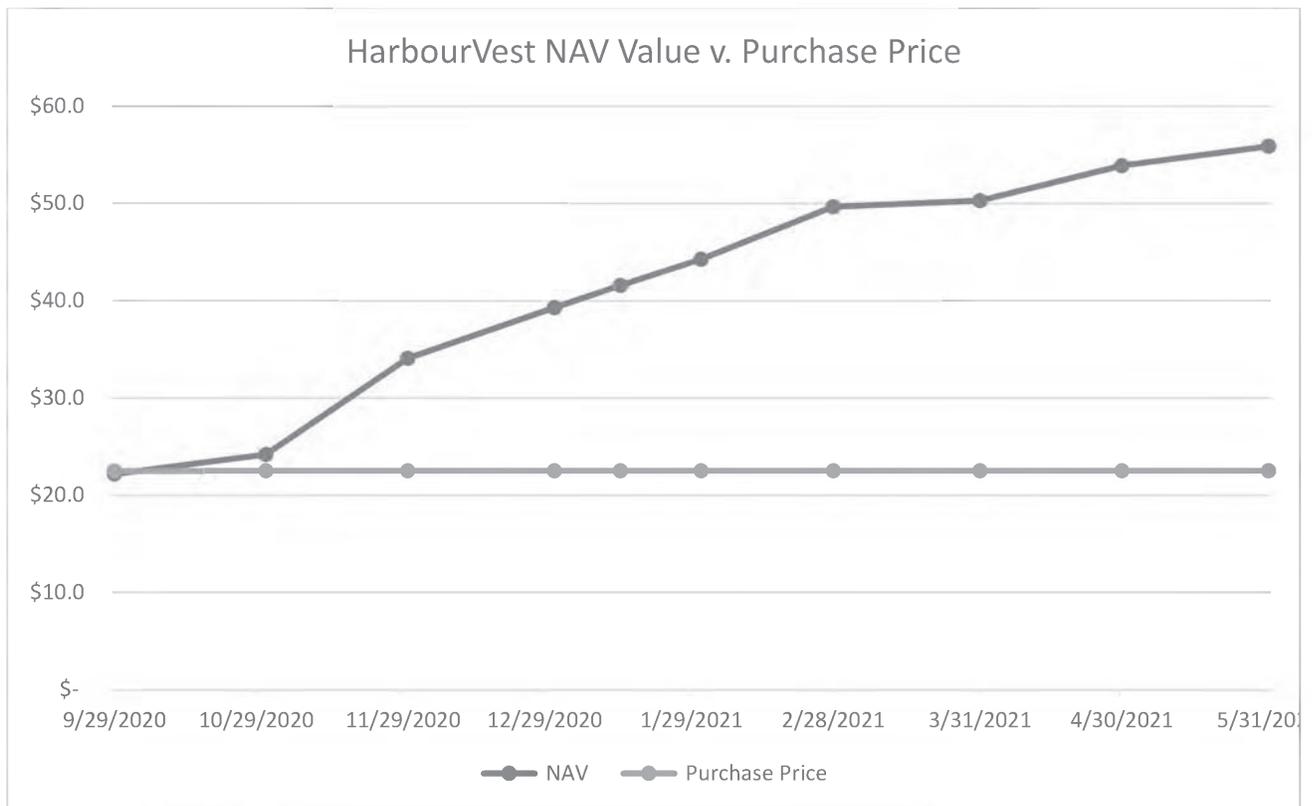
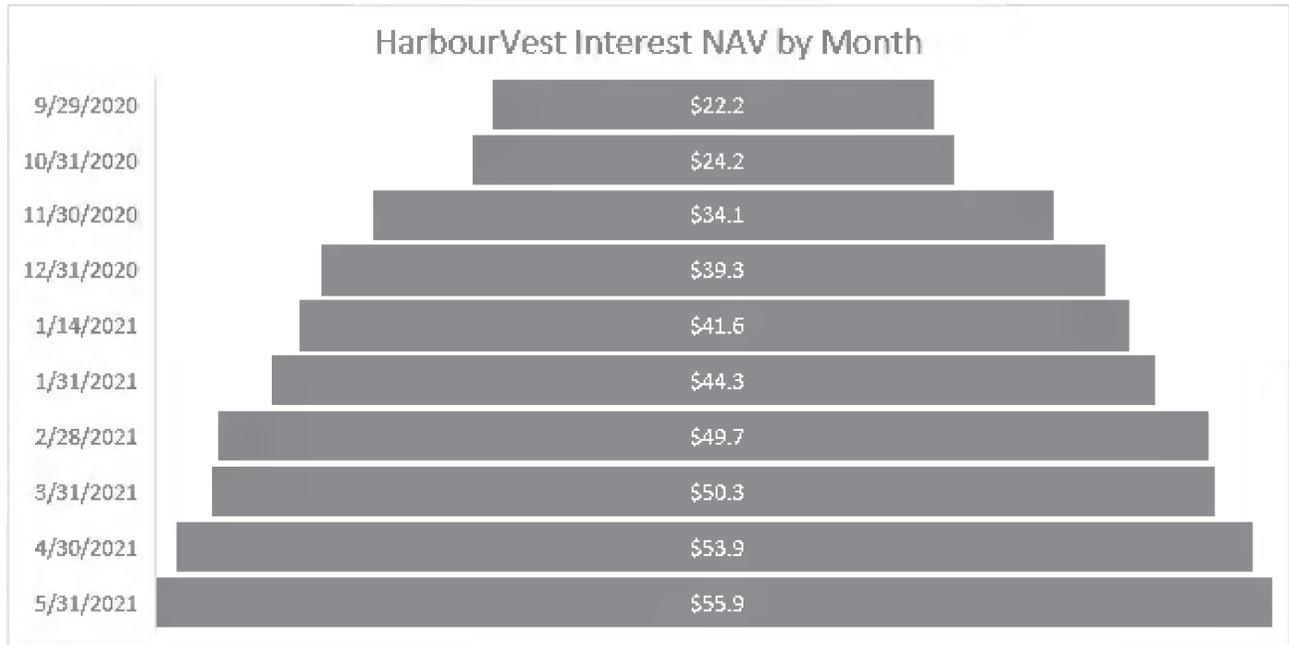
	10/15/2019	12/31/2020	1/31/2021
<b>Assets</b>			
Cash and cash equivalents	\$2,529,000	\$12,651,000	\$10,651,000
Investments, at fair value	\$232,620,000	\$109,211,000	\$142,976,000
Equity method investees	\$161,819,000	\$103,174,000	\$105,293,000
mgmt and incentive fee receivable	\$2,579,000	\$2,461,000	\$2,857,000
fixed assets, net	\$3,754,000	\$2,594,000	\$2,518,000
due from affiliates	\$151,901,000	\$152,449,000	\$152,538,000
reserve against notices receivable		(\$61,039,000)	(\$61,167,000)
other assets	\$11,311,000	\$8,258,000	\$8,651,000
<b>Total Assets</b>	<b>\$566,513,000</b>	<b>\$329,759,000</b>	<b>\$364,317,000</b>
<b>Liabilities and Partners' Capital</b>			
pre-petition accounts payable	\$1,176,000	\$1,077,000	\$1,077,000
post-petition accounts payable		\$900,000	\$3,010,000
Secured debt			
Frontier	\$5,195,000	\$5,195,000	\$5,195,000
Jefferies	\$30,328,000	\$0	\$0
Accrued expenses and other liabilities	\$59,203,000	\$60,446,000	\$49,445,000
Accrued re-organization related fees		\$5,795,000	\$8,944,000
Class 8 general unsecured claims	\$73,997,000	\$73,997,000	\$267,607,000
Partners' Capital	\$396,614,000	\$182,347,000	\$29,039,000
<b>Total liabilities and partners' capital</b>	<b>\$566,513,000</b>	<b>\$329,757,000</b>	<b>\$364,317,000</b>

Notable notations/disclosures in the Jan. 31, 2021 MOR include:

- Class 8 claims totaled \$267 million, a jump from \$74 million in the prior month’s MOR
- The MOR stated that no Class 9 recovery was expected, which was based on the then existing \$267 million in Class 8 Claims.
- Currently, there are roughly \$310 million of Allowed Class 8 Claims.

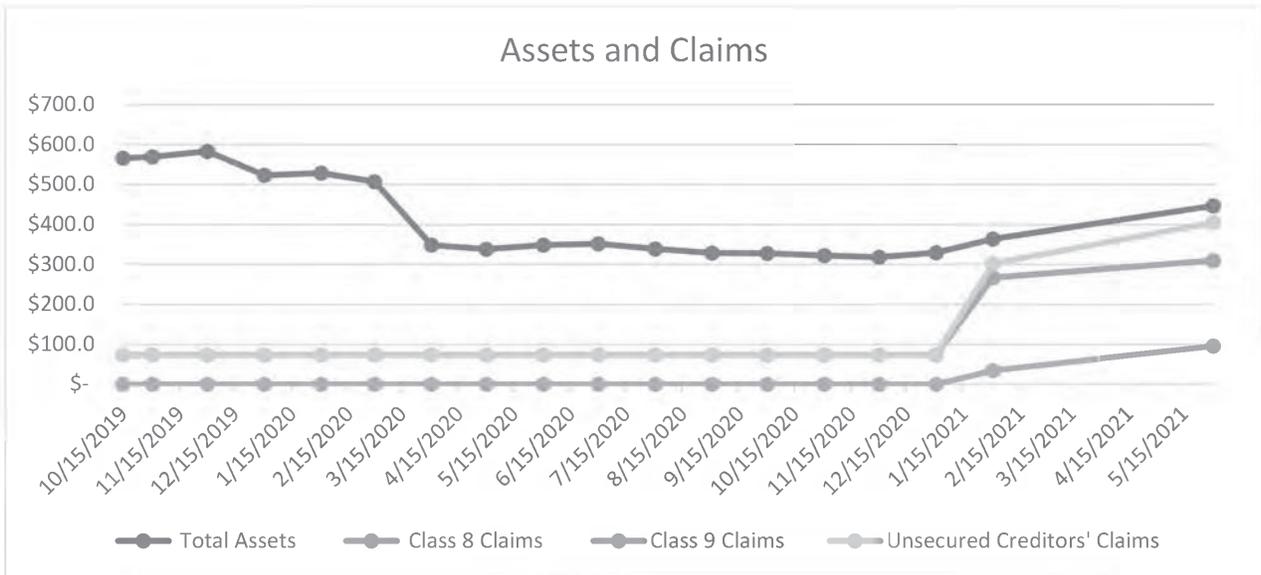
<sup>3</sup> [Doc. 2030] Filed on March 15, 2021, the last publicly disclosed information regarding the value of assets in the estate.

Value of HarbourVest Claim



Estate Value as of August 1, 2021 (in millions)<sup>4</sup>

Asset	Low	High
Cash as of 6/30/2021	\$17.9	\$17.9
Targa Sale	\$37.0	\$37.0
8/1 CLO Flows	\$10.0	\$10.0
Uchi Bldg. Sale	\$9.0	\$9.0
Siepe Sale	\$3.5	\$3.5
PetroCap Sale	\$3.2	\$3.2
HarbourVest trapped cash	\$25.0	\$25.0
<b>Total Cash</b>	<b>\$105.6</b>	<b>\$105.6</b>
Trussway	\$180.0	\$180.0
Cornerstone (125mm; 16%)	\$18.0	\$18.0
HarbourVest CLOs	\$40.0	\$40.0
CCS Medical (in CLOs and Highland Restoration)	\$20.0	\$20.0
MGM (direct ownership)	\$32.0	\$32.0
Multi-Strat (45% of 100mm; MGM; CCS)	\$45.0	\$45.0
Korea Fund	\$18.0	\$18.0
Celtic (in Credit-Strat)	\$12.0	\$40.0
SE Multifamily	\$0.0	\$20.0
Affiliate Notes	\$0.0	\$70.0
Other	\$2.0	\$10.0
<b>TOTAL</b>	<b>\$472.6</b>	<b>\$598.6</b>



<sup>4</sup> Values are based upon historical knowledge of the Debtor’s assets (including cross-holdings) and publicly filed information.

HarbourVest Motion to Approve Settlement [Doc. 1625]

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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§ § Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§ § Case No. 19-34054-sgj11
Debtor.	§ §

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (“Highland” or the “Debtor”), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement (the “Settlement Agreement”),<sup>2</sup> a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion (“Morris Dec.”), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”). In support of this Motion, the Debtor represents as follows:

#### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9019 of the Bankruptcy Rules.

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

## RELEVANT BACKGROUND

### A. Procedural Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the official committee of unsecured creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s case to this Court [Docket No. 186].<sup>3</sup>

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor’s general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor’s chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

**B. Overview of HarbourVest's Claims**

10. HarbourVest's claims against the Debtor's estate arise from its \$80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of \$300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.<sup>4</sup>

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<sup>4</sup> Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

**C. Summary of HarbourVest's Factual Allegations**

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately \$8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the “Transfers”), on January 24, 2018, Terry moved for a temporary restraining order (the “TRO”) from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the “Acis Bankruptcy Case”). The Bankruptcy Court overruled the Debtor’s objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the “Acis Trustee”). A long sequence of events subsequently transpired, all of which relate to HarbourVest’s claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").
- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.
- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."
- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.
- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

**D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim**

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to” the Operative Documents “and any and all legal and equitable claims or causes of action relating to the forgoing harm.” *See, e.g.,* Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest’s Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the “Claim Objection”).

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the “Fraud Claims”), U.S. State and Federal Securities Law Claims (the “Securities Claims”), violations of the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the “HarbourVest Claims”).

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than \$300 million (based largely on a theory of treble damages).

**E. Settlement Discussions**

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

#### **F. Summary of Settlement Terms**

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;<sup>5</sup>
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of \$45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

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<sup>5</sup> The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately \$22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

### **BASIS FOR RELIEF REQUESTED**

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. See *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. See *In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” See *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court’s TRO that restricted HCLOF’s ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor’s estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's \$300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

#### **NO PRIOR REQUEST**

41. No previous request for the relief sought herein has been made to this, or any other, Court.

#### **NOTICE**

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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*/s/ Zachery Z. Annable*

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UBS Settlement [Doc. 2200-1]

Case 19-34054-sgj11 Doc 2200-1 Filed 04/15/21 Entered 04/15/21 14:37:56 Page 1 of 17

**Exhibit 1**  
**Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat,” and together with its general partner and its direct and indirect wholly-owned subsidiaries, the “MSCF Parties”), (iii) Strand Advisors, Inc. (“Strand”), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, “UBS”).

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO Fund, the “Funds”) related to a securitization transaction (the “Knox Agreement”);

**WHEREAS**, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

**WHEREAS**, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the “State Court”) against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the “2009 Action”);

**WHEREAS**, UBS’s lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. (“HFP”), Highland Credit Strategies Master Funds, L.P. (“Credit-Strat”), Highland Crusader Offshore Partners, L.P. (“Crusader”), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

**WHEREAS**, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”);

**WHEREAS**, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the “State Court Action”), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

**WHEREAS**, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

**EXECUTION VERSION**

**WHEREAS**, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

**WHEREAS**, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of \$105,647,679 (the "Transferred Assets") and purported face value of over \$300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

**WHEREAS**, Sentinel treated the Transferred Assets as payment for a \$25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

**WHEREAS**, the Insurance Policy purports to provide coverage to the Funds for up to \$100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

**WHEREAS**, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

**WHEREAS**, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

**WHEREAS**, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

**WHEREAS**, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

**WHEREAS**, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

**WHEREAS**, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

**WHEREAS**, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately \$32,823,423.50 (the "Sentinel Redemption");

**WHEREAS**, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of \$1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

**WHEREAS**, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

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fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

**WHEREAS**, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

**WHEREAS**, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

**WHEREAS**, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

**WHEREAS**, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for \$1,039,957,799.40;

**WHEREAS**, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

**WHEREAS**, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

**WHEREAS**, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

**WHEREAS**, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

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**WHEREAS**, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

**WHEREAS**, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of \$94,761,076 [Docket No. 1518];

**WHEREAS**, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

**WHEREAS**, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

**WHEREAS**, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

**WHEREAS**, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

**1. Settlement of Claims.** In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;<sup>1</sup> and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

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(b) Multi-Strat will pay UBS the sum of \$18,500,000 (the “Multi-Strat Payment”) as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the “HCMLP Excluded Employees”); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor’s actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities’ holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

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MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of \$3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

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(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

### 2. Definitions.

(a) “Agreement Effective Date” shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) “HCMLP Parties” shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) “Order Date” shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) “UBS Parties” shall mean UBS Securities LLC and UBS AG London Branch.

### 3. Releases.

(a) UBS Releases. Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys’ fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

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or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the “UBS Released Claims”), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities’ past, present or future subsidiaries and feeders funds (the “UBS Unrelated Investments”); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

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their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

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attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

**6. Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

**7. Representations and Warranties.**

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

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**8. No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

**9. Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

**10. Notice.** Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

**HCMLP Parties or the MSCF Parties**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Telephone No.: 972-628-4100  
E-mail: notices@HighlandCapital.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
E-mail: jpomerantz@pszjlaw.com

**UBS**

UBS Securities LLC  
UBS AG London Branch  
Attention: Elizabeth Kozlowski, Executive Director and Counsel  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-9007  
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC  
UBS AG London Branch  
Attention: John Lantz, Executive Director  
1285 Avenue of the Americas  
New York, NY 10019

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Telephone No.: 212-713-1371  
E-mail: john.lantz@ubs.com

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP  
Attention: Andrew Clubok  
Sarah Tomkowiak  
555 Eleventh Street, NW, Suite 1000  
Washington, D.C. 20004-1304  
Telephone No.: 202-637-3323  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

**11. Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

**13. No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

**14. Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

**15. Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

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Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

**16. Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: [Signature]  
Name: James P. Seery Jr.  
Its: Authorized Signatory

HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)

By: [Signature]  
Name: James P. Seery Jr.  
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.

By: [Signature]  
Name: James P. Seery Jr.  
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.

By: [Signature]  
Name: James P. Seery Jr.  
Its: Authorized Signatory

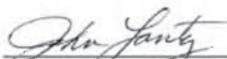
STRAND ADVISORS, INC.

By: [Signature]  
Name: James P. Seery Jr.  
Its: Authorized Signatory

11

**EXECUTION VERSION**

**UBS SECURITIES LLC**

By:   
Name: John Lantz  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

**UBS AG LONDON BRANCH**

By:   
Name: William Chandler  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

EXECUTION VERSION

APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled “Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets” (the “Tax Memo”), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the \$105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero’s relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor’s settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

## Hellman & Friedman Seeded Farallon Capital Management

### OUR FOUNDER

[RETURN TO ABOUT \(ABOUT\)](#)

## Warren Hellman: One of the good guys

**Warren Hellman was a devoted family man**, highly successful businessman, active philanthropist, dedicated musician, arts patron, endurance athlete and all-around good guy. Born in New York City in 1934, he grew up in the Bay Area, graduating from the University of California at Berkeley. After serving in the U.S. Army and attending Harvard Business School, Warren began his finance career at Lehman Brothers, becoming the youngest partner in the firm's history at age 26 and subsequently serving as President. After a distinguished career on Wall Street, Warren moved back west and co-founded Hellman & Friedman, building it into one of the industry's leading private equity firms.

**Warren deeply believed in the power of people** to accomplish incredible things and used his success to improve and enrich the lives of countless people. Throughout his career, Warren helped found or seed many successful businesses including Matrix Partners, Jordan Management Company, Farallon Capital Management and Hall Capital Partners.

**Within the community**, Warren and his family were generous supporters of dozens of organizations and causes in the arts, public education, civic life, and public health, including creating and running the San Francisco Free Clinic. Later in life, Warren became an accomplished 5-string banjo player and found great joy in sharing the love of music with others. In true form, he made something larger of this avocation to benefit others by founding the Hardly Strictly Bluegrass Festival, an annual three-day, free music festival that draws hundreds of thousands of people together from around the Bay Area.

**An accomplished endurance athlete**, Warren regularly completed 100-mile runs, horseback rides and combinations of the two. He also was an avid skier and national caliber master ski racer and served as president of the U.S. Ski Team in the late 1970s, and is credited with helping revitalize the Sugar Bowl ski resort in the California Sierras.

**In short**, Warren Hellman embodied the ideal of living life to the fullest. He had an active mind and body, and a huge heart. We are lucky to call him our founder. [Read more about Warren.](https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf) (https://hf.com/wp-content/uploads/2015/09/Warren-Hellman-News-Release.pdf)



SFChronicle/SFGate/Liz Hafalla



Robert Holmgren



no caption

<https://hf.com/warren-hellman/>

1/2

## Hellman & Friedman Owned a Portion of Grosvenor until 2020

**GCM** GROSVENOR

### Grosvenor Capital Management

In 2007, H&F invested in Grosvenor, one of the world's largest and most diversified independent alternative asset management firms. The Company offers comprehensive public and private markets solutions and a broad suite of investment and advisory choices that span hedge funds, private equity, and various credit and specialty strategies. Grosvenor specializes in developing customized investment programs tailored to each client's specific investment goals.

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**SECTOR**

Financial Services

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**STATUS**

Past

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[www.gcmlp.com](http://www.gcmlp.com) (<http://www.gcmlp.com>)

[CONTACT \(HTTPS://HF.COM/CONTACT/\)](https://hf.com/contact/)

[INFO@HF.COM \(MAILTO:INFO@HF.COM\)](mailto:info@hf.com)

[LP LOGIN \(HTTPS://SERVICES.SUNGARDDX.COM/CLIENT/HELLMAN\)](https://services.sungarddx.com/client/hellman)

[BACK](#)

[GP LOGIN \(HTTPS://SERVICES.SUNGARDDX.COM/DOCUMENT/2720045\)](https://services.sungarddx.com/document/2720045)

[TERMS OF USE \(HTTPS://HF.COM/TERMS-OF-USE/\)](https://hf.com/terms-of-use/)

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[KNOW YOUR CALIFORNIA RIGHTS \(HTTPS://HF.COM/YOUR-CALIFORNIA-CONSUMER-PRIVACY-ACT-RIGHTS/\)](https://hf.com/your-california-consumer-privacy-act-rights/)

[\(HTTPS://WWW.LINKEDIN.COM/COMPANY/HELLMAN-&-FRIEDMAN\)](https://www.linkedin.com/company/hellman-&-friedman/)

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CORNER OFFICE



Julie Segal

## GCM Grosvenor to Go Public

The \$57 billion alternatives manager will become a public company after merging with a SPAC backed by Cantor Fitzgerald.

August 03, 2020



Chicago, IL (Tim Boyle/Bloomberg)

In a sign of the times, GCM Grosvenor will become a public company through a SPAC.

The Chicago-based alternative investments firm is planning to go public by merging with a special purpose acquisition company in a deal valued at \$2 billion. The 50-year-old firm has \$57 billion in assets in private equity, infrastructure, real estate, credit, and absolute return investments.

“We have long valued having external shareholders and we wanted to preserve the accountability and focus that comes with that,” Michael Sacks, GCM Grosvenor’s chairman and CEO, said in a statement.

GCM Grosvenor will combine with CF Finance Special Acquisition Corp, a SPAC backed by Cantor Fitzgerald, according to an announcement from both companies on Monday. After the company goes public, Sacks will continue to lead GCM Grosvenor, which is owned by management and Hellman & Friedman, a private equity firm. Hellman & Friedman, which has owned a minority stake of the Chicago asset manager since 2007, will sell its equity as

Farallon was a Significant Borrower for Lehman

Case Study – Large Loan Origination

Debt origination for an affiliate of Simon Property Group Inc. and Farallon Capital Management

Date	June 2007
Asset Class	Retail
Asset Size	1,808,506 Sq. Ft.
Sponsor	Simon Property Group Inc. / Farallon Capital Management
Transaction Type	Refinance
Total Debt Amount	Lehman Brothers: \$121 million JP Morgan: \$200 million

**Transaction Overview**

- ◆ In June 2007, Lehman Brothers co-originated a loan in the aggregate amount of \$321 million (Lehman portion: \$121 million) with JP Morgan to a special purpose affiliate of a joint venture between Simon Property Group Inc (“Simon”) and Farallon Capital Management (“Farallon”) secured by the shopping center known as Gurnee Mills Mall (the “Property”) located in Gurnee, IL .
- ◆ The Property consists of a one-story, 200 store discount mega-mall comprised of 1,808,506 square feet anchored by Burlington Coat Factory, Marshalls, Bed Bath & Beyond and Kohls among other national retailers. Built in 1991, the Property underwent a \$5 million interior renovation in addition to a \$71 million redevelopment between 2004 and 2005. As of March 2007, the Property had a in-line occupancy of 99.5%.



**Lehman Brothers Role**

- ◆ Simon and Farallon comprised the sponsorship which eventually merged with The Mills Corporation in early 2007 for \$25.25 per common share in cash. The total value of the transaction was approximately \$1.64 billion for all of the outstanding common stock, and approximately \$7.9 billion including assumed debt and preferred equity.
- ◆ Lehman and JP Morgan subsequently co-originated \$321 million loan at 79.2% LTV based on an appraisal completed in March by Cushman & Wakefield. The Loan was used to refinance the indebtedness secured by the Property.

**Sponsorship Overview**

- ◆ The Mills Corporation, based in Chevy Chase MD is a developer owner and manager of a diversified portfolio of retail destinations including regional shopping malls and entertainment centers. They currently own 38 properties in the United States totaling 47 million square feet.

Mr. Seery Represented Stonehill While at Sidley

James P. Seery, Jr.  
John G. Hutchinson  
John J. Lavelle  
Martin B. Jackson  
Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
(212) 839-5300 (tel)  
(212) 839-5599 (fax)

*Attorneys for the Steering Group*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
	:
In re:	: Chapter 11
	:
BLOCKBUSTER INC., <i>et al.</i> ,	: Case No. 10-14997 (BRL)
	:
Debtors.	: (Jointly Administered)
	:
-----	X

**THE BACKSTOP LENDERS’ OBJECTION TO THE MOTION OF LYME REGIS TO ABANDON CERTAIN CAUSES OF ACTION OR, IN THE ALTERNATIVE, TO GRANT STANDING TO LYME REGIS TO PURSUE CLAIMS ON BEHALF OF THE ESTATE**

1. The Steering Group of Senior Secured Noteholders who are Backstop Lenders -- Icahn Capital LP, Monarch Alternative Capital LP, Owl Creek Asset Management, L.P., Stonehill Capital Management LLC, and Värde Partners, Inc. (collectively, the “Backstop Lenders”) -- hereby file this objection (the “Objection”) to the Motion of Lyme Regis Partners, LLC (“Lyme Regis”) to Abandon Certain Causes of Action or, in the Alternative, to Grant Standing to Lyme Regis to Pursue Claims on Behalf of the Estate (the “Motion”) [Docket No. 593].

Stonehill Founder (Motulsky) and Grosvenor's G.C. (Nesler) Were Law School Classmates



Over 25 years earlier, here is a group at a party. From the left, Bob Zinn, Dave Lowenthal, Rory Little, Joe Nesler, Jon Polonsky (in front of Joe), John Motulsky and Mark Windfeld-Hansen (behind bottle!) Motulsky circulated this photo at the reunion. Thanks John!



**Joseph H. Nesler** (He/Him)  
General Counsel

More

Message



**Joseph H. Nesler** (He/Him) ·



Yale Law School

3rd  
General Counsel  
Winnetka, Illinois, United States ·  
Contact info

500+ connections

Message

More

**Open to work**

Chief Compliance Officer and General Counsel roles  
See all details

**About**

I have over 38 years of experience representing participants in the investment management industry with respect to a wide range of legal and regulatory matters, including SEC, DOL, FINRA, and NFA regulations and examinations. ... see more

**Activity**

522 followers

Posts Joseph H. created, shared, or commented on in the last 90 days are displayed here.

<https://www.linkedin.com/in/josephnesler/>



**Joseph H. Nesler** (He/Him)  
General Counsel

More

Message

**General Counsel**

Dalpha Capital Management, LLC  
Aug 2020 – Jul 2021 · 1 yr



**Of Counsel**

Winston & Strawn LLP  
Sep 2018 – Jul 2020 · 1 yr 11 mos  
Greater Chicago Area

**Principal**

The Law Offices of Joseph H. Nesler, LLC  
Feb 2016 – Aug 2018 · 2 yrs 7 mos



**Grosvenor Capital Management, L.P.**

11 yrs 9 mos

**Independent Consultant to Grosvenor Capital Management, L.P.**

May 2015 – Dec 2015 · 8 mos  
Chicago, Illinois

**General Counsel**

Apr 2004 – Apr 2015 · 11 yrs 1 mo  
Chicago, Illinois

**Managing Director, General Counsel and Chief Compliance Officer (April 2004 – April 2015)**

Investor Communication to Highland Crusader Funds Stakeholders



Alvarez & Marsal  
Management, LLC 2029 Gei  
Park East Suite 206C  
Angeles, CA 9

July 6, 2021

**Re: Update & Notice of Distribution**

Dear Highland Crusader Funds Stakeholder,

As you know, in October 2020, the Bankruptcy Court approved a settlement of the Redeemer Committee's and the Crusader Funds' claims against Highland Capital Management L.P. ("HCM"), as a result of which the Redeemer Committee was allowed a general unsecured claim of \$137,696,610 against HCM and the Crusader Funds were allowed a general unsecured claim of \$50,000 against HCM (collectively, the "Claims"). In addition, as part of the settlement, various interests in the Crusader Funds held by HCM and certain of its affiliates are to be extinguished (the "Extinguished Interests"), and the Redeemer Committee and the Crusader Funds received a general release from HCM and a waiver by HCM of any claim to distributions or fees that it might otherwise receive from the Crusader Funds (the "Released Claims" and, collectively with the Extinguished Interests, the "Retained Rights").

A timely appeal of the settlement was taken by UBS (the "UBS Appeal") in the United States District Court for the Northern District of Texas, Dallas Division. However, the Bankruptcy Court subsequently approved a settlement between HCM and UBS, resulting in dismissal of the UBS Appeal with prejudice on June 14, 2021.

On April 30, 2021, the Crusader Funds and the Redeemer Committee consummated the sale of the Claims against HCM and the majority of the remaining investments held by the Crusader Funds to Jessup Holdings LLC ("Jessup") for \$78 million in cash, which was paid in full to the Crusader Funds at closing. The sale specifically excluded the Crusader Funds' investment in Cornerstone Healthcare Group Holding Inc. and excluded certain specified provisions of the settlement agreement with HCM (the "Settlement Agreement"), including, but not limited to, the Retained Rights. The sale of the Claims and investments was made with no holdbacks or escrows.

The sale to Jessup resulted from a solicitation of offers to purchase the Claims commenced by Alvarez & Marsal CRF Management LLC ("A&M CRF"), as Investment Manager of the Crusader Funds, in consultation with the Redeemer Committee. Ultimately, the Crusader Funds and the Redeemer Committee entered exclusive negotiations with Jessup, culminating in the sale to Jessup.

A&M CRF, pursuant to the Plan and Scheme and with the approval of House Hanover, the Redeemer Committee and the Board of the Master Fund, now intends to distribute the proceeds from the Jessup transaction (\$78 million), net of any applicable tax withholdings and with no reserves for the Extinguished Claims or the Released Claims. In addition, the distribution will include approximately \$9.4 million in proceeds that have been redistributed due to the cancellation

and extinguishment of the interests and shares in the Crusader Funds held by HCM, Charitable DAF and Eames in connection with the Settlement Agreement, resulting in a total gross distribution of \$87.4 million. Distributions will be based on net asset value as of June 30, 2021.

Please note that A&M CRF intends to make the distributions by wire transfer no later than July 31, 2021. Please confirm your wire instructions on or before **July 20, 2021**. If there are any revisions to your wire information, please use the attached template to provide SEI and A&M CRF your updated information on investor letterhead. This information should be sent on or before **July 20, 2021** to Alvarez & Marsal CRF and SEI at [CRFInvestor@alvarezandmarsal.com](mailto:CRFInvestor@alvarezandmarsal.com) and [AIFS-IS\\_Crusader@seic.com](mailto:AIFS-IS_Crusader@seic.com), respectively.

The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By: 

\_\_\_\_\_  
Steven Varner  
Managing Director



Alvarez & Marsal CRF  
Management, LLC 2029 Century  
Park East Suite 2060 Los  
Angeles, CA 90067

July 6, 2021

**Re: Update & Notice of Distribution**

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The wire payments will be made to the investor bank account on file with an effective and record date of July 1, 2021. Should you have any questions, please contact SEI or A&M CRF at the e-mail addresses listed above.

Sincerely,

Alvarez & Marsal CRF Management, LLC

By:   
\_\_\_\_\_  
Steven Varner  
Managing Director

**On investor letterhead, please use the template below to provide Alvarez & Marsal CRF Management, LLC and SEI your updated wire information.**

<b>Information Needed</b>	<b>Wire Information Input</b>
Investor name (as it reads on monthly statements)  Fund(s) Invested  Contact Information (Phone No. and Email)  Updated Wire Information <ul style="list-style-type: none"><li>• Beneficiary Bank</li><li>• Bank Address</li><li>• Beneficiary (Account) Name</li><li>• ABA/Routing #</li><li>• Account #</li><li>• SWIFT Code</li></ul> International Wires <ul style="list-style-type: none"><li>• Correspondent Bank</li><li>• ABA/Routing #</li><li>• SWIFT Code</li></ul>	

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

Date: \_\_\_\_\_

001406

# Exhibit 3

CAUSE NO. DC-23-01004

IN RE:	§	IN THE DISTRICT COURT
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	191 <sup>ST</sup> JUDICIAL DISTRICT
	§	
<i>Petitioner,</i>	§	
	§	DALLAS COUNTY, TEXAS

DECLARATION OF JAMES DONDERO

STATE OF TEXAS §  
 COUNTY OF DALLAS §

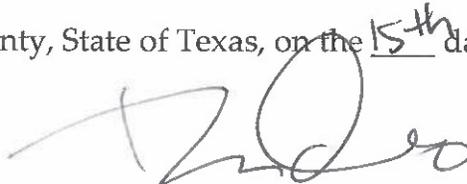
The undersigned provides this Declaration pursuant to Texas Civil Practice & Remedies Code § 132.001 and declares as follows:

1. My name is James Dondero. I am over twenty-one (21) years of age. I am of sound mind and body, and I am competent to make this declaration. The facts stated within this declaration are based upon my personal knowledge and are true and correct.
2. I previously served as the Chief Executive Officer (“CEO”) of Highland Capital Management, L.P. (“HCM”). Jim Seery succeeded me in this capacity following the entry of various orders in the bankruptcy proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054 (“HCM Bankruptcy Proceedings”).
3. On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple’s interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. My purpose was to alert Mr. Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades. A true and correct copy of this email is attached hereto as Exhibit “1”.

4. In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC (“Farallon”), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Mr. Seery because they had made significant profits when Mr. Seery told them to purchase other claims in the past. They also stated they were particularly optimistic because of the expected sale of MGM.
5. During one of these calls involving Mr. Linn, I asked whether they would sell the claims for 30% more than they had paid. Mr. Linn said no because Mr. Seery said they were worth a lot more. I asked Mr. Linn if he would sell at any price and he said that he was unwilling to do so. I believe these conversations with Farallon were taped by Farallon.
6. My name is James Dondero, my date of birth is June 29, 1962, and my address is 3807 Miramar Ave., Dallas, Texas 75205, United States of America. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 15<sup>th</sup> day of February 2023.

A handwritten signature in black ink, appearing to read 'James Dondero', written over a horizontal line.

JAMES DONDERO

# Exhibit 1

001411

**From:** Jim Dondero <JDondero@highlandcapital.com>

**To:** Thomas Surgent <TSurgent@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>, Scott Ellington <SELLington@HighlandCapital.com>, "Joe Sowin" <JSowin@HighlandCapital.com>, Jason Post <JPost@NexpointAdvisors.com>

**Cc:** "D. Lynn (\\"Judge Lynn\\")" <michael.lynn@bondsellis.com>, Bryan Assink <bryan.assink@bondsellis.com>

**Subject:** Trading restriction re MGM - material non public information

**Date:** Thu, 17 Dec 2020 14:14:39 -0600

**Importance:** Normal

---

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

Sent from my iPhone

001412

# Exhibit 4

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

**In re:** §  
§  
**HIGHLAND CAPITAL** § **Chapter 11**  
**MANAGEMENT, L.P.** §  
§ **Case No. 19-34054-sgj11**  
**Debtor.** §

**DECLARATION OF SAWNIE A. MCENTIRE**

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

The undersigned provides this Declaration pursuant to 28 U.S.C. 1746 and declares as follows:

1. My name is Sawnie A. McEntire. I am over 21 years of age. I am of sound mind and body and I am competent to make this declaration. Unless otherwise indicated, the facts stated within this declaration are based upon my personal knowledge and are true and correct.
2. I am a licensed attorney in good standing with the State Bar of Texas. I am a Director and Shareholder at the firm Parsons McEntire McCleary PLLC. I serve as lead counsel for Hunter Mountain Investment Trust ("HMIT") in these proceedings in regard to the motion described in Paragraph 3 below. I also served as lead counsel for HMIT in Rule 202 Proceedings filed in the 191<sup>st</sup> District Court of Dallas County, Texas, Cause No. DC-23-01004 ("Rule 202 Proceedings").
3. I submit this declaration in support of HMIT's Emergency Motion for Leave to File Adversary Proceeding ("Emergency Motion") to which this Declaration is attached.

4. On January 20, 2023, HMIT filed its Verified Rule 202 Petition in the 191<sup>st</sup> District Court of Dallas County, Texas, Cause No. DC-23-01004. **A true and correct copy of HMIT's Verified Rule 202 Petition, with accompanying exhibits, is attached to this declaration as Exhibit 4-A.**
5. HMIT served notice of the Rule 202 Petition and hearing on Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), Muck Holdings LLC ("Muck"), and Jessup Holdings LLC ("Jessup") in February 2023. Farallon and Stonehill entered an appearance, responded to the proceedings, and were represented by David Shulte of the law firm of Holland & Knight. Among other things, the Rule 202 Petition sought discovery related to Farallon and Stonehill's due diligence, if any, concerning the sale and transfer of four allowed bankruptcy claims in the above-referenced bankruptcy proceedings from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021.<sup>1</sup>
6. On February 22, 2023, HMIT's Verified Rule 202 Petition was heard by the Honorable Gena Slaughter of the 191<sup>st</sup> District Court of Dallas County, Texas. **A true and correct copy of the Hearing Transcript of the Rule 202 Proceedings on February 22, 2023, is attached to this declaration as Exhibit 4-B ("Transcript").** At this hearing, I argued on behalf of HMIT and Mr. Shulte argued on behalf of Farallon and Stonehill. During this hearing, Farallon and Stonehill admitted they acquired the Claims through their respective "special purpose entities," as reflected in the Transcript. Farallon resisted the requested discovery in the state district court.
7. A true and correct copy of a certified copy of Muck's formation papers in the State of Delaware, showing Muck was created on March 9, 2021, is attached to this Declaration as **Exhibit 4-D**. A true and correct copy of a certified copy of Jessup's formation papers in Delaware, showing Jessup was created on April 8, 2021, is attached to this Declaration as **Exhibit 4-E**. Muck and Jessup's corporate formation documents do not identify their respective members or managing members. See Exhibit 4-D and 4-E.
8. On March 8, 2023, the state district court denied and dismissed HMIT's Verified Rule 202 Petition. This ruling was necessarily without prejudice. A true and correct copy of the related Order, dated March 8, 2023, is attached to this declaration as **Exhibit 4-C**.

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<sup>1</sup> See Notices of Transfers [Docs. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].

9. On March 9, 2023, my law partner, Roger McCleary sent correspondence to Mr. Schulte, as Farallon and Stonehill's counsel, requesting disclosure of the details of their respective legal relationships to Muck and Jessup. Farallon and Stonehill never responded to this inquiry. A true and correct copy of this email correspondence, dated March 9, 2023, is attached to this declaration as **Exhibit 4-F**.
  
10. I declare under the penalty of perjury that the foregoing is true and correct.  
Executed on March 27, 2023.

FURTHER DECLARANT SAYETH NOT.

Executed in Dallas County, State of Texas, on the 27<sup>th</sup> day of March 2023.

  
Sawnie A. McEntire

# Exhibit 4-A

DC-23-01004

CAUSE NO. \_\_\_\_\_

IN RE:	§	IN THE DISTRICT COURT
	§	191st
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	____th JUDICIAL DISTRICT
	§	
<i>Petitioner,</i>	§	
	§	DALLAS COUNTY, TEXAS

**PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST’S  
VERIFIED RULE 202 PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Hunter Mountain Investment Trust (“HMIT”), files this Verified Petition (“Petition”) pursuant to Rule 202 of the Texas Rules of Civil Procedure, seeking pre-suit discovery from Respondent Farallon Capital Management, LLC (“Farallon”) and Respondent Stonehill Capital Management, LLC (“Stonehill”) (collectively “Respondents”), to allow HMIT to investigate potential claims against Respondents and other potentially adverse entities, and would respectfully show:

**PARTIES**

1. HMIT is a Delaware statutory trust that was the largest equity holder in Highland Capital Management, L.P. (“HCM”), holding a 99.5% limited partnership interest. HCM filed chapter 11 bankruptcy proceedings in 2019 and, as a result of these

proceedings,<sup>1</sup> HMIT held a Class 10 claim which, post-confirmation, was converted to a Contingent Trust Interest in HCM's post-reorganization sole limited partner.

2. Farallon is a Delaware limited liability company with its principal office in California, which is located at One Maritime Plaza, Suite 2100, San Francisco, CA 94111.

3. Stonehill is a Delaware limited liability company with its principal office in New York, which is located at 320 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10022.

### VENUE AND JURISDICTION

4. Venue is proper in Dallas County, Texas, because all or substantially all of the events or omissions giving rise to HMIT's potential common law claims occurred in Dallas County, Texas. In the event HMIT elects to proceed with a lawsuit against Farallon and Stonehill, venue of such proceedings will be proper in Dallas County, Texas.

5. This Court has jurisdiction over the subject matter of this Petition pursuant to Texas Rule of Civil Procedure 202.<sup>2</sup> The amount in controversy of any potential claims against Farallon or Stonehill far exceeds this Court's minimum jurisdictional requirements. Without limitation, HMIT specifically seeks to investigate potentially actionable claims for unjust enrichment, imposition of a constructive trust with

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<sup>1</sup> These proceedings were initially filed in Delaware but were ultimately transferred to and with venue in the U.S. Bankruptcy Court for the Northern District of Texas.

<sup>2</sup> The discovery relief requested in this Petition does not implicate the HCM bankruptcy court's jurisdiction. Furthermore, this Rule 202 Petition is not subject to removal because there is no amount in actual controversy and there is no cause of action currently asserted.

disgorgement, knowing participation in breaches of fiduciary duty, and tortious interference with business expectancies.

6. This Court has personal jurisdiction over the Respondents from which discovery is sought because both Farallon and Stonehill are doing business in Texas under Texas law including, without limitation, TEX. CIV. PRAC. & REM. CODE §17.042. Consistent with due process, Respondents have established minimum contacts with Texas, and the assertion of personal jurisdiction over Respondents complies with traditional notions of fair play and substantial justice. HMIT's potential claims against Respondents arise from and/or relate to Farallon's and Stonehill's contacts in Texas. Respondents also purposefully availed themselves of the privilege of conducting business activities within Texas, thus invoking the benefits and protections of Texas law.

### SUMMARY

7. HMIT seeks to investigate potential claims relating to the sale and transfer of large, unsecured creditors' claims in HCM's bankruptcy to special purpose entities affiliated with and/or controlled by Farallon and Stonehill (the "Claims"). Upon information and belief, Farallon and Stonehill historically had and benefited from close relationships with James Seery ("Seery"), who was serving as HCM's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO") at the time of the Claims purchases. Furthermore, still upon information and belief, because Farallon and Stonehill acquired or controlled the acquisition of the Claims under highly questionable

circumstances. HMIT seeks to investigate whether Respondents received material non-public information and were involved in insider trading in connection with the acquisition of the Claims.

8. The pre-suit discovery which HMIT seeks is directly relevant to potential claims, and it is clearly appropriate under Rule 202.1(b). HMIT anticipates the institution of a future lawsuit in which it may be a party due to its status as a stakeholder as former equity in HCM or in its current capacity as a Contingent Trust Interest holder, as well as under applicable statutory and common law principles relating to the rights of trust beneficiaries. In this context, HMIT may seek damages on behalf of itself or, alternatively, in a derivative capacity and without limitation, for damages or disgorgement of monies for the benefit of the bankruptcy estate.

9. HMIT currently anticipates a potential lawsuit against Farallon and Stonehill as defendants and, as such, Farallon and Stonehill have adverse interests to HMIT in connection with the anticipated lawsuit. The addresses and telephone numbers are as follows: **Farallon Capital Management LLC**, One Maritime Plaza, Suite 2100, San Francisco, CA 94111, Telephone: 415-421-2132; **Stonehill Capital Management, LLC**, 320 Park Avenue, 26th Floor, New York, NY 10022, 212-739-7474 . Additionally, the following parties also may be parties with adverse interests in any potential lawsuit: **Muck Holdings LLC**, c/o Crowell & Moring LLP, Attn: Paul B. Haskel, 590 Madison Avenue, New York, NY 10022, 212-530-1823; **Jessup Holdings LLC**, c/o Mandel, Katz and Brosnan

LLP, Attn: John J. Mandler, 100 Dutch Hill Road, Suite 390, Orangeburg, NY 10962, 845-6339-7800.

### BACKGROUND<sup>3</sup>

#### A. *Procedural Background*

10. On or about October 16, 2019, HCM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.

11. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee, which is a committee of investors in an HCM-affiliated fund known as the Crusader Fund that obtained an arbitration award against HCM in the hundreds of millions of dollars; Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS") - and an unpaid vendor, Meta-E Discovery.

12. Following the venue transfer to Texas on December 27, 2019, HCM filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary*

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<sup>3</sup> All footnote references to evidence involve documents filed in the HCM bankruptcy proceedings and are cited by "Dkt." reference. HMIT asks the Court to take judicial notice of the documents identified by these docket entries.

Course (“HCM’s Governance Motion”).<sup>4</sup> On January 9, 2020, the Court signed an order approving HCM’s Settlement Motion (the “Governance Order”).<sup>5</sup>

13. As part of the Governance Order, an independent board of directors—which included Seery as one of the UCC’s selections—was appointed to the Board of Directors (the “Board”) of Strand Advisors, Inc., (“Strand Advisors”) HCM’s general partner. Following the approval of the Governance Order, the Board then appointed Seery as HCM’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”) in place of the previous CEO.<sup>6</sup> Seery currently serves as Trustee of the Claimant Trust (HCM’s sole post-reorganization limited partner) and, upon information and belief, continues to serve as CEO of HCM following the effective date of the HCM bankruptcy reorganization plan (“Plan”).<sup>7</sup>

***B. Seery’s Relationships with Stonehill and Farallon***

14. Farallon and Stonehill are two capital management firms (similar to HCM) that, upon information belief, have long-standing relationships with Seery. Upon information and belief, they eventually participated in, directed and/or controlled the acquisition of hundreds of millions of dollars of unsecured Claims in HCM’s bankruptcy on behalf of funds which they manage. It appears they did so without any meaningful

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<sup>4</sup> Dkt. 281.

<sup>5</sup> Dkt. 339.

<sup>6</sup> Dkt. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>7</sup> See Dkt. 1943, Order Approving Plan, p. 34.

due diligence, much less reasonable due diligence, and *ostensibly* based their investment decisions only on Seery's input.

15. Upon information and belief, Seery historically has had a substantial business relationship with Farallon and he previously served as legal counsel to Farallon in other matters. Upon information and belief, Seery also has had a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee<sup>8</sup> (an original member of the Unsecured Creditors Committee in HCM's bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM's CEO and CRO.

### C. *Claims Trading*

16. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of settlements with Redeemer, Acis, UBS, and another major creditor, HarbourVest<sup>9</sup> (the "Settlements") (Redeemer, Acis, UBS, and HarbourVest are collectively the "Settling Parties"), resulting in the following allowed claims:<sup>10</sup>

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<sup>8</sup> Declaration of John A. Morris [Dkt. 1090], Ex. 1, pp. 15.

<sup>9</sup> "HarbourVest" collectively refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.

<sup>10</sup> Orders Approving Settlements [Dkt. 1273, Dkt. 1302, Dkt. 1788, Dkt. 2389].

Creditor	Class 8	Class 9
Redeemer	\$137 mm	\$0 mm
Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	\$65 mm	\$60 mm

17. Although these Settlements were achieved after years of hard-fought litigation,<sup>11</sup> each of the Settling Parties *curiously* sold their claims to Farallon or Stonehill (or affiliated special purpose entities) shortly after they obtained court approval of their Settlements. One of these “trades” occurred within just a few weeks before the Plan’s Effective Date.<sup>12</sup> Upon information and belief, Farallon and Stonehill coordinated and controlled the purchase of these Claims through special purpose entities, Muck Holdings, LLC (“Muck”) and Jessup Holdings, LLC (“Jessup”) (collectively “SPEs”).<sup>13</sup> Upon information and belief, both of these SPEs were created on the eve of the Claims purchases for the ostensible purpose of taking and holding title to the Claims.

18. Upon information and belief, Farallon and Stonehill directed and controlled the investment of over \$160 million dollars to acquire the Claims in the absence of any publicly available information that could rationally justify this substantial investment. These “trades” are even more surprising because, at the time of the confirmation of HCM’s Plan, the Plan provided only pessimistic estimates that these Claims would ever receive full satisfaction:

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<sup>11</sup> Order Confirming Plan, pp. 9-11.

<sup>12</sup> Dkt. 2697, 2698.

<sup>13</sup> See Notice of Removal [Dkt 2696], ¶ 4.

- a. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;<sup>14</sup>
  - i. This meant that Farallon and Stonehill invested more than \$163 million in Claims *when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.*
- b. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54% (down approximately \$328.3 million);<sup>15</sup>
- c. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM's assets dropped over \$200 million from \$566 million to \$328.3 million;<sup>16</sup>
- d. Despite the stark decline in the valuation of the HCM bankruptcy estate and reduction in percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively the "Claims") in April and August of 2021<sup>17</sup> in the combined amount of approximately \$163 million; and
- e. Upon information and belief:
  - i. Stonehill, through an SPE, Jessup, acquired the Redeemer Committee's claim for approximately \$78 million;<sup>18</sup>

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<sup>14</sup> Dkt. 1875-1, Plan Supplement, Exh. A, p. 4.

<sup>15</sup> Dkt. 2949.

<sup>16</sup> Dkt 1473, Disclosure Statement, p. 18.

<sup>17</sup> Notices of Transfers [Dkt. 2211, 2212, 2261, 2262, 2263, 2215, 2697, 2698].

<sup>18</sup> July 6, 2021 Letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

- ii. The \$23 million Acis claim<sup>19</sup> was sold to Farallon/Muck for approximately \$8 million;
- iii. HarbourVest sold its combined approximately \$80 million in claims to Farallon/Muck for approximately \$27 million; and
- iv. UBS sold its combined approximately \$125 million in claims for approximately \$50 million to both Stonehill/Jessup and Farallon/Muck *at a time when the total projected payout was only approximately \$35 million.*

19. In Q3 2021, just over \$6 million of the projected \$205 million available to satisfy general unsecured claims was disbursed.<sup>20</sup> No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—\$45 million more than was *ever* projected.<sup>21</sup> According to HCM’s Motion for Exit Financing,<sup>22</sup> and a recent motion filed by Dugaboy Investment Trust,<sup>23</sup> there remain *substantial* assets to be monetized for the benefit of HCM’s creditors. Thus, upon information and belief, the funds managed by Stonehill and Farallon stand to realize significant profits on their Claims purchases. In turn, upon information and belief, Stonehill and Farallon will garner (or already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the purchase of the Claims.

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<sup>19</sup> Seery/HCM have argued that \$10 million of the Acis claim is self-funding. Dkt. 1271, Transcript of Hearing on Motions to Compromise Controversy with Acis Capital Management [1087] and the Redeemer Committee of the Highland Crusader Fund [1089], p. 197.

<sup>20</sup> Dkt. 3200.

<sup>21</sup> Dkt. 3582.

<sup>22</sup> Dkt. 2229.

<sup>23</sup> Dkt. 3382.

**D. *Material Information is Not Disclosed***

20. Bankruptcy Rule 2015.3 requires debtors to “file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest.” No public reports required by Rule 2015.3 were filed. Seery testified they simply “fell through the cracks.”<sup>24</sup>

21. As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest’s interest in HCLOF for approximately \$22.5 million as part of the transaction.<sup>25</sup> Approximately 19.1% of HCLOF’s assets were comprised of debt and equity in Metro-Goldwyn-Mayer Studios, Inc. (“MGM”). The HCLOF interest was not to be transferred to HCM for distribution as part of the bankruptcy estate, but rather to “to an entity to be designated by the Debtor”—*i.e.*, one that was not subject to typical bankruptcy reporting requirements.<sup>26</sup>

22. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, upon information and belief, it appears that Seery may have acquired material non-public information regarding Amazon’s now-consummated interest in acquiring MGM,<sup>27</sup> yet there is no record of Seery’s disclosure of such

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<sup>24</sup> Dkt. 1905, February 3, 2021 Hearing Transcript, 49:5-21.

<sup>25</sup> Dkt. 1625, p. 9, n. 5.

<sup>26</sup> Dkt. 1625.

<sup>27</sup> Dkt. 150-1.

information to the Court, HCM's creditors, or otherwise. Upon the receipt of this material non-public information, HMIT understands, upon information and belief, that MGM was supposed to be placed on HCM's "restricted list," but Seery nonetheless continued to move forward with deals that involved MGM assets.<sup>28</sup>

23. As HCM additionally held its own direct interest in MGM,<sup>29</sup> the value of MGM was of paramount importance to the value of HCM's bankruptcy estate. HMIT believes, upon information and belief, that Seery conveyed material non-public information regarding MGM to Stonehill and Farallon as inducement to purchase the Claims.

#### **E. *Seery's Compensation***

24. Upon information and belief, a component of Seery's compensation is a "success fee" that depends on the actual liquidation of HCM's bankruptcy estate assets versus the Plan projections. As current holders of the largest claims against the HCM estate, Muck and Jessup, the SPEs apparently created and controlled by Stonehill and Farallon, were installed as two of the three members of an Oversight Board in charge of monitoring the activities of HCM, as the Reorganized Debtor, and the Claimant Trust.<sup>30</sup> Thus, along with a single independent restructuring professional, Farallon and

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<sup>28</sup> See Dkt. 1625, Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith, filed December 23, 2020

<sup>29</sup> Motion for Exit Financing.[Dkt.2229]

<sup>30</sup> Dkt. 2801.

Stonehill's affiliates oversee Seery's go-forward compensation, including any "success" fee.<sup>31</sup>

### DISCOVERY REQUESTED

25. HMIT seeks to investigate whether Farallon and Stonehill received material non-public information in connection with, and as inducement for, the negotiation and sale of the claims to Farallon and Stonehill or its affiliated SPEs. Discovery is necessary to confirm or deny these allegations and expose potential abuses and unjust enrichment.

26. The requested discovery from Farallon is attached as Exhibit "A", and includes the deposition of one or more of its corporate representatives and the production of documents. The requested discovery from Stonehill is attached as Exhibit "B", and includes the deposition of Stonehill's corporate representative(s) and the production of documents.

27. Pursuant to Rule 202.2(g), the requested discovery will include matters that will allow HMIT to evaluate and determine, among other things:

- a. The substance and types of information upon which Stonehill and Farallon relied in making their respective decisions to invest in or acquire the Claims;
- b. Whether Farallon and Stonehill conducted due diligence, and the substance of any due diligence when evaluating the Claims;

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<sup>31</sup> Claimant Trust Agreement [Dkt. 1656-2].

- c. The extent to which Farallon and Stonehill controlled the SPEs, Muck and Jessup, in connection with the acquisition of the Claims;
- d. The creation and organizational structure of Farallon, Stonehill, Muck, and Jessup, as well as the purpose of creating Muck and Jessup as SPEs to hold the Claims;
- e. Any internal valuations of Muck or Jessup's net asset value (NAV);
- f. Any external valuation or audits of the NAV attributable to the Claims;
- g. Any documents reflecting expected profits from the purchase of the Claims;
- h. All communications between Farallon and Seery concerning the value and purchase of the Claims;
- i. All communications between Stonehill and Seery concerning the value and purchase of the Claims;
- j. All documents reflecting the expected payout on the Claims;
- k. All communications between Farallon or Stonehill and HarbourVest concerning the purchase of the Claims;
- l. All communications between Farallon or Stonehill and Acis regarding the purchase of the Claims;
- m. All communications between Farallon or Stonehill and UBS regarding the purchase of the Claims;
- n. All communications between Farallon or Stonehill and The Redeemer Committee regarding the purchase of the Claims;
- o. All communications between Farallon and Stonehill regarding the purchase of the Claims;

- p. All communications between Farallon and Stonehill and investors in their respective funds regarding purchase of the Claims or valuation of the Claims;
- q. All communications between Seery and Stonehill or Farallon regarding Seery's compensation as the Trustee of the Claimant Trust;
- r. All documents relating to, regarding, or reflecting any agreements between Seery and the Oversight Committee regarding compensation;
- s. All documents reflecting the base fees and performance fees which Stonehill has received or may receive in connection with management of the Claims;
- t. All documents reflecting the base fees and performance fees which Farallon has received or may receive in connection with management of the Claims;
- u. All monies received by and distributed by Muck in connection with the Claims;
- v. All monies received by and distributed by Jessup in connection with the Claims;
- w. All documents reflecting whether Farallon is a co-investor in any fund which holds an interest in Muck; and
- x. All documents reflecting whether Stonehill is a co-investor in any fund which holds an interest in Jessup.

#### **BENEFIT OUTWEIGHS THE BURDEN**

28. The beneficial value of the requested discovery greatly outweighs any conceivable burden that could be placed on the Respondents. The requested information

also should be readily available because the Respondents have been engaged in the bankruptcy proceedings relating to the matters at issue for several years.

29. The important benefit associated with this requested discovery is also clear – it is reasonably calculated to determine whether the Respondents have unjustly garnered tens of millions of dollars of benefit based upon insider information. If this occurred, the monies received as a result of such conduct are properly subject to a constructive trust and disgorged. This would result in substantial funds available for other creditors, including those creditors in Class 10, which includes HMIT as a beneficiary. This significant benefit, in addition to the value of bringing proper light to the activities of Farallon and Stonehill as discussed in this petition, far outweighs any purported burden associated with requiring Respondents to sit for focused depositions concerning the topics and documents identified in Exhibits A and B.

#### **REQUEST FOR HEARING AND ORDER**

30. After service of this Petition and notice, Rule 202.3(a) requires the Court to hold a hearing on this Petition.

#### **PRAYER FOR RELIEF**

31. Petitioner Hunter Mountain Investment Trust respectfully requests that the Court issue an order pursuant to Texas Rule of Civil Procedure 202 authorizing HMIT to take a deposition of designated representatives of Farallon Capital Management, LLC and Stonehill Capital Management, LLC. HMIT additionally requests authorization to

issue subpoenas duces tecum compelling the production of documents in connection with the depositions in compliance with Tex. R. Civ. P. 205, and asks that the Court grant HMIT all such other and further relief to which it may be justly entitled.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/ Sawnie A. McEntire

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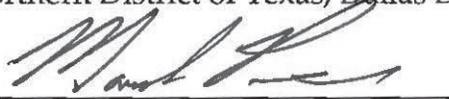
*Attorneys for Petitioner Hunter  
Mountain Investment Trust*

**VERIFICATION**

STATE OF TEXAS       §  
  §  
COUNTY OF DALLAS   §

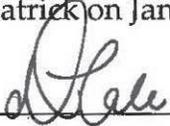
Before me, the undersigned notary, on this day personally appeared Mark Patrick, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

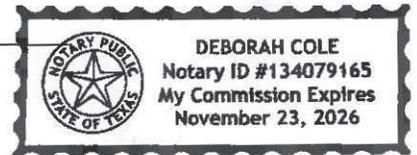
“My name is Mark Patrick. I am the Administrator of Hunter Mountain Investment Trust, and I am authorized and capable of making this verification. I have read Petitioner Hunter Mountain Investment Trust’s Verified Rule 202 Petition (“Petition”). The facts as stated in the Petition are true and correct based on my personal knowledge and review of relevant documents in the proceedings styled *In re Highland Capital Management, L.P.*, Case No. 19-34054, in the United States Bankruptcy Court in the Northern District of Texas, Dallas Division .”



Mark Patrick

Sworn to and subscribed before me by Mark Patrick on January 20, 2023.

  
\_\_\_\_\_  
Notary Public in and for  
the State of Texas



3116424.1

**EXHIBIT "A"**

CAUSE NO. \_\_\_\_\_

IN RE:	§	IN THE DISTRICT COURT
	§	
HUNTER MOUNTAIN	§	
INVESTMENT TRUST	§	____th JUDICIAL DISTRICT
	§	
<i>Petitioner,</i>	§	
	§	DALLAS COUNTY, TEXAS

**NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC**

TO: Farallon Capital Management, LLC, by and through its attorney of record  
\_\_\_\_\_.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Farallon Capital Management, LLC ("Farallon") on \_\_\_\_\_, 2023 at \_\_\_\_\_.m. before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at \_\_\_\_\_ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Farallon is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Farallon concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

001436

Respectfully submitted,

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*Attorneys for Petitioner Hunter Mountain  
Investment Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that, on January \_\_\_, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

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Sawnie A. McEntire

## EXHIBIT "A"

### TO NOTICE OF DEPOSITION OF FARALLON CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

#### RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.
2. The terms "all" and "any" shall be construed as all and any.
3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. The use of the singular form of any word includes the plural and vice versa.

#### DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

*Acis.* The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

*Any and all.* The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

*Bankruptcy Case.* The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

*Claims.* The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

*Communication.* The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

*Concerning.* The term “concerning” means reflecting, regarding, relating to, referring to, describing, evidencing, or constituting.

*Document or documents.* The terms “document” or “documents” shall mean anything that may be considered to be a document or tangible thing within the meaning of the TEXAS RULES OF CIVIL PROCEDURE, including (without limitation) Electronically Stored Information and the originals and all copies of any correspondence, memoranda, handwritten or other notes, letters, files, records, papers, drafts and prior versions, diaries, calendars, telephone or other message slips, invoices, files, statements, books, ledgers, journals, work sheets, inventories, accounts, calculations, computations, studies, reports, indices, summaries, facsimiles, telegrams, telecopied matter, publications, pamphlets, brochures, periodicals, sound recordings, surveys, statistical compilations, work papers, photographs, videos, videotapes, drawings, charts, graphs, models, contracts, illustrations, tabulations, records (including tape recordings and transcriptions thereof) of meetings, conferences and telephone or other conversations or communications, financial statements, photostats, e-mails, microfilm, microfiche, data sheets, data processing cards, computer tapes or printouts, disks, word processing or computer diskettes, computer software, source and object codes, computer programs and other writings, or recorded, transcribed, punched, taped and other written, printed, recorded, digital, or graphic matters and/or electronic data of any kind however produced or reproduced and maintained, prepared, received, or transmitted, including any reproductions or copies of documents which are not identical duplicates of the original and any reproduction or copies of documents of which the originals are not in your possession, custody or control.

*Electronically Stored Information or ESI.* The terms “Electronically Stored Information” or “ESI” shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI

*Estate.* The term “Estate” means HCM’s bankruptcy estate.

*Farallon, you, and your.* The terms “Farallon,” “you,” and “your” shall mean Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

*Grosvenor*. The term "Grosvenor" refers to Grosvenor Capital Management, L.P.

*HarbourVest*. The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

*HCM*. The term "HCM" refers to debtor Highland Capital Management, L.P.

*Jessup*. The term "Jessup" refers to Jessup Holdings, LLC.

*MGM*. The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

*Muck*. The term "Muck" shall refer to Muck Holdings, LLC.

*NAV*. The term "NAV" means net asset value.

*Oversight Board*. The term "Oversight Board" refers to the Claimant Trust Oversight Committee (a/k/a the Oversight Board of the Highland Claimant Trust) as identified in Bankruptcy Case Dkt. No. 2801.

*Person*. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

*Plan*. The term "Plan" refers to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified).

*Redeemer*. The term "Redeemer" means the Redeemer Committee of the Highland Crusader Funds.

*Seery*. The term "Seery" refers to James P. ("Jim") Seery.

*Settling Parties*. The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

*Stonehill*. The term "Stonehill" refers to Stonehill Capital Management, LLC.

*Strand*. The term "Strand" refers to Strand Advisors, Inc.

*UBS*. The term “UBS” refers to UBS Securities LLC and UBS AG London Branch, collectively.

## EXHIBIT "1"

### TOPIC CATEGORIES

The witness(es) designated by Farallon to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

- a. The substance, types, and sources of information Farallon considered in making any decision to invest in any of the Claims on behalf of itself, Muck, and/or any fund with which Farallon is connected;
- b. Whether Farallon conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;
- c. Any and all communications with James Dondero;
- d. The extent to which Farallon was involved in creating and organizing Muck in connection with the acquisition of any of the Claims;
- e. The organizational structure of Muck (including identification of all members, managing members), as well as the purpose for creating Muck, including, but not limited to, regarding holding title to any of the Claims;
- f. Any internal valuations of Muck's Net Asset Value (NAV), as well as all assets owned by Muck;
- g. Any external valuation or audits of the NAV attributable to any of the Claims;
- h. Any documents reflecting profit forecasts relating to any of the Claims;
- i. All communications between Farallon and Seery relating to any of the Claims;

- j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;
- k. All communications between Farallon and any of the Settling Parties concerning any of the Claims;
- l. Any negotiations between Farallon and any of the Settling Parties concerning any of the Claims;
- m. All communications between Farallon and Stonehill regarding any of the Claims;
- n. All communications between Farallon and any investors in any fund managed by Farallon regarding any of the Claims or valuation of the Claims;
- o. All communications between Seery and Farallon regarding Seery's compensation as Trustee of the Claimant Trust;
- p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;
- q. All base fees and performance fees which Farallon has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;
- r. All monies received by Muck in connection with any of the Claims and any distributions made by Muck to any members of Muck relating to such Claims;
- s. Whether Farallon is a co-investor in any fund which holds an interest in Muck or otherwise holds a direct interest in Muck and all documents reflecting the same;
- t. All communications between Farallon and any of the following entities concerning any of the Claims:
  - i. UCC;

- ii. Highland;
  - iii. Grosvenor;
  - iv. Muck;
  - v. the Oversight Board.
- u. The sources of funds used by Muck for the acquisition of any of the Claims;
  - v. The terms and conditions of any agreements governing the transfers of any of the Claims to Muck;
  - w. Representations made by Farallon, Muck, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;
  - x. Farallon's valuation or evaluation of HCM's Estate;
  - y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;
  - z. The appointment of Muck to the Oversight Board;
  - aa. Farallon's historical relationships and business dealings with Seery and Grovesnor;
  - bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Muck.

## EXHIBIT "2"

### DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Farallon concerning any of the following topics:
  - a. the transfer of the Claims;
  - b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
  - c. valuation of the Claims or the assets underlying the Claims;
  - d. promises and representations made in connection with the transfer of the Claims;
  - e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;
  - f. consideration for the transfer of the Claims;
  - g. the value of HCM's Estate;
  - h. the projected future value of HCM's Estate;
  - i. past distributions and projected distributions from HCM's Estate;
  - j. compensation earned by or paid to Seery in connection with or relating to the Claims;
  - k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
  - l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Farallon, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Stonehill, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
  - a. the transfer of the Claims;
  - b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
  - c. valuation of the Claims or the assets underlying the Claims;

- d. promises and representations made in connection with the transfer of the Claims;
  - e. any due diligence undertaken by Farallon or Muck prior to acquiring the Claims;
  - f. consideration for the transfer of the Claims;
  - g. the value of HCM's Estate;
  - h. the projected future value of HCM's Estate;
  - i. past distributions and projected distributions from HCM's Estate;
  - j. compensation earned by or paid to Seery in connection with or relating to the Claims;
  - k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
  - l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
3. All correspondence and/or other documents by or between Farallon and/or Muck and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.
  4. Any and all documents reflecting the sources of funding used by Muck to acquire any of the Claims.
  5. Organizational and formation documents relating to Muck including, but not limited to, Muck's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.
  6. Company resolutions prepared by or on behalf of Muck approving the acquisition of any of the Claims.
  7. Any and all documents reflecting any internal or external audits regarding Muck's NAV.
  8. Agreements between Farallon and Muck regarding management, advisory, or other services provided to Muck by Farallon.
  9. Any and all documents reviewed by Farallon as part of its evaluation and due diligence regarding any of the Claims.
  10. Any documents reflecting any communications with James Dondero;
  11. Annual fund audits relating to Muck.

12. Muck's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Farallon in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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**EXHIBIT "B"**

**CAUSE NO.** \_\_\_\_\_

<b>IN RE:</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>HUNTER MOUNTAIN</b>	§	
<b>INVESTMENT TRUST</b>	§	<b>____th JUDICIAL DISTRICT</b>
	§	
<i>Petitioner,</i>	§	
	§	<b>DALLAS COUNTY, TEXAS</b>

**NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC**

TO: Stonehill Capital Management, LLC, by and through its attorney of record  
\_\_\_\_\_.

PLEASE TAKE NOTICE that, pursuant to Tex. R. Civ. P. 199, 202, and 205, Petitioner Hunter Mountain Investment Trust ("HMIT") will take the deposition on oral examination under oath of Stonehill Capital Management, LLC ("Stonehill") on \_\_\_\_\_, 2023 at \_\_\_\_\_ .m. before a notary public or other person authorized to administer a proper oath and will be recorded by stenographic means. The deposition will take place at \_\_\_\_\_ before a court reporter and videographer and will continue from day to day until completed. The deposition may also be recorded by non-stenographic (videotape) means.

Please take further notice that, pursuant to Tex. R. Civ. P. 199.2(b), Stonehill is requested to designate one or more person(s) most knowledgeable and prepared to testify on behalf of Stonehill concerning the topics identified on Exhibit "1", and to produce the documents described in Exhibit "2", attached hereto.

001448

Respectfully submitted,

---

Sawnie A. McEntire  
State Bar No. 13590100  
smcentire@pmmlaw.com  
Ian B. Salzer  
State Bar No. 24110325  
isalzer@pmmlaw.com  
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Facsimile: (214) 237-4340

Roger L. McCleary  
State Bar No. 13393700  
rmccleary@pmmlaw.com  
One Riverway, Suite 1800  
Houston, Texas 77056  
Telephone: (713) 960-7315  
Facsimile: (713) 960-7347

*Attorneys for Petitioner Hunter Mountain  
Investment Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that, on January \_\_\_, 2023, a true and correct copy of the foregoing document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

---

Sawnie A. McEntire

## EXHIBIT "A"

### TO NOTICE OF DEPOSITION OF STONEHILL CAPITAL MANAGEMENT, LLC

For purposes of the attached Exhibits "1" and "2", the following rules and definitions shall apply.

#### RULES OF CONSTRUCTION

1. The terms "all" and "each" shall be construed as all and each.
2. The terms "all" and "any" shall be construed as all and any.
3. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
4. The use of the singular form of any word includes the plural and vice versa.

#### DEFINITIONS

The terms used herein shall have the following meanings unless the context requires otherwise:

*Acis.* The term "Acis" refers to Acis Capital Management, L.P. and Acis Capital Management GP LLC, collectively.

*Any and all.* The terms "any" and "all" should be understood in either the most or the least inclusive sense as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope. "Any" includes the word "all," and "all" includes the term "any."

*Bankruptcy Case.* The term "Bankruptcy Case" shall mean the Chapter 11 Bankruptcy of Debtor Highland Capital Management, L.P., Case No. 19-34054 in the United States Bankruptcy Court for the Northern District of Texas.

*Claims.* The term "Claims" shall mean the claims against Highland's Estate transferred to/acquired by Muck and/or Jessup as evidenced by Bankruptcy Case Dkt. Nos. 2215, 2261, 2262, 2263, 2697, 2698.

*Communication.* The term "communication" means any manner in which the mental processes of one individual are related to another, including without limitation, any verbal utterance, correspondence, **email, text message**, statement, transmission of information by computer or other device, letters, telegrams, telexes, cables, telephone

conversations, and records or notations made in connection therewith, notes, memoranda, sound recordings, electronic data storage devices, and any other reported, recorded or graphic matter or document relating to any exchange of information.

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*Electronically Stored Information or ESI.* The terms “Electronically Stored Information” or “ESI” shall mean and include all documents, notes, photographs, images, digital, analog or other information stored in an electronic medium. Please produce all Documents/ESI in .TIF format (OCR text, single page). Please also provide a Summation Pro Load File (.dii) respect to all such Documents/ESI

*Estate.* The term “Estate” means HCM’s bankruptcy estate.

*Farallon.* The term “Farallon,” refers to Farallon Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to, Muck Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees, representatives, attorneys, predecessors, successors,

assigns, related entities, parent companies, subsidiaries, and/or entities in which Farallon is a general partner or owns an entities' general partner, or anyone else acting on Farallon's behalf, now or at any time relevant to the response.

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*HarbourVest.* The term "HarbourVest" refers to HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., collectively.

*HCM.* The term "HCM" refers to debtor Highland Capital Management, L.P.

*Jessup.* The term "Jessup" refers to Jessup Holdings, LLC.

*MGM.* The term "MGM" refers to Metro-Goldwyn-Mayer Studios, Inc.

*Muck.* The term "Muck" shall refer to Muck Holdings, LLC.

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*Seery.* The term "Seery" refers to James P. ("Jim") Seery.

*Settling Parties.* The term "Settling Parties" refers to Redeemer, Acis, HarbourVest, and UBS, collectively.

*Stonehill, "you," and "your."* The terms "Stonehill", "you," and "your" shall mean Stonehill Capital Management, LLC and its corporate parent, subsidiaries, or affiliates and entities it manages or operates, including, but not limited to Jessup Holdings, LLC. These terms also include any owners, partners, shareholders, agents, employees,

representatives, attorneys, predecessors, successors, assigns, related entities, parent companies, subsidiaries, and/or entities in which Stonehill is a general partner or owns an entities' general partner, or anyone else acting on Stonehill's behalf, now or at any time relevant to the response .

*Strand.* The term "Strand" refers to Strand Advisors, Inc.

*UBS.* The term "UBS" refers to UBS Securities LLC and UBS AG London Branch, collectively.

## EXHIBIT "1"

### TOPIC CATEGORIES

The witness(es) designated by Stonehill to testify on its behalf is (are) requested to testify concerning the following Topic Categories:

- a. The substance, types, and sources of information Stonehill considered in making any decision to invest in any of the Claims on behalf of itself, Jessup, and/or any fund with which Stonehill is connected;
- b. Whether Stonehill conducted due diligence, and the substance and identification of any due diligence (including associated documents), when evaluating any of the Claims;
- c. Any and all communications with James Dondero;
- d. The extent to which Stonehill was involved in creating and organizing Jessup in connection with the acquisition of any of the Claims;
- e. The organizational structure of Jessup (including identification of all members, managing members), as well as the purpose for creating Jessup, including, but not limited to, regarding holding title to any of the Claims;
- f. Any internal valuations of Jessup's Net Asset Value (NAV), as well as all assets owned by Jessup;
- g. Any external valuation or audits of the NAV attributable to any of the Claims;
- h. Any documents reflecting profit forecasts relating to any of the Claims;
- i. All communications between Stonehill and Seery relating to any of the Claims;

- j. All forecasted payout(s) on any of the Claims and all documents including or reflecting the same;
- k. All communications between Stonehill and any of the Settling Parties concerning any of the Claims;
- l. Any negotiations between Stonehill and any of the Settling Parties concerning any of the Claims;
- m. All communications between Stonehill and Farallon regarding any of the Claims;
- n. All communications between Stonehill and any investors in any fund managed by Stonehill regarding any of the Claims or valuation of the Claims;
- o. All communications between Seery and Stonehill regarding Seery's compensation as Trustee of the Claimant Trust;
- p. All agreements and other communications between Seery and the Oversight Committee regarding Seery's compensation and all documents relating to, regarding, or reflecting such agreements and other communications;
- q. All base fees and performance fees which Stonehill has received or may receive in connection with the Claims and all documents relating to, regarding, or reflecting the same;
- r. All monies received by Jessup in connection with any of the Claims and any distributions made by Jessup to any members of Jessup relating to such Claims;
- s. Whether Stonehill is a co-investor in any fund which holds an interest in Jessup or otherwise holds a direct interest in Jessup and all documents reflecting the same;
- t. All communications between Stonehill and any of the following entities concerning any of the Claims:
  - i. UCC;

- ii. Highland;
  - iii. Grosvenor;
  - iv. Jessup;
  - v. the Oversight Board.
- u. The sources of funds used by Jessup for the acquisition of any of the Claims;
  - v. The terms and conditions of any agreements governing the transfers of any of the Claims to Jessup;
  - w. Representations made by Stonehill, Jessup, Seery, and/or the Settling Parties in connection with the transfer of any of the Claims;
  - x. Stonehill's valuation or evaluation of HCM's Estate;
  - y. Information learned regarding MGM during the pendency of the negotiations relating to the Claims;
  - z. The appointment of Jessup to the Oversight Board;
  - aa. Stonehill's historical relationships and business dealings with Seery and Grovesnor;
  - bb. Representations made to the bankruptcy court in connection with the transfer of any of the Claims to Jessup.

## EXHIBIT "2"

### DOCUMENT REQUESTS

1. Any and all documents created by, prepared for, or received by Stonehill concerning any of the following topics:
  - a. the transfer of the Claims;
  - b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
  - c. valuation of the Claims or the assets underlying the Claims;
  - d. promises and representations made in connection with the transfer of the Claims;
  - e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;
  - f. consideration for the transfer of the Claims;
  - g. the value of HCM's Estate;
  - h. the projected future value of HCM's Estate;
  - i. past distributions and projected distributions from HCM's Estate;
  - j. compensation earned by or paid to Seery in connection with or relating to the Claims;
  - k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
  - l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
2. Any and all communications between Stonehill, on the one hand, and any of the following individuals or entities: (i) Seery, (ii) the UCC, (iii) the Settling Parties, (iv) Farallon, (vi) Grosvenor, or, (vii) the Oversight Board, concerning any of the following topics:
  - a. the transfer of the Claims;
  - b. negotiation and/or consummation of any agreement regarding the transfer of the Claims;
  - c. valuation of the Claims or the assets underlying the Claims;

- d. promises and representations made in connection with the transfer of the Claims;
  - e. any due diligence undertaken by Stonehill or Jessup prior to acquiring the Claims;
  - f. consideration for the transfer of the Claims;
  - g. the value of HCM's Estate;
  - h. the projected future value of HCM's Estate;
  - i. past distributions and projected distributions from HCM's Estate;
  - j. compensation earned by or paid to Seery in connection with or relating to the Claims;
  - k. compensation earned by or paid to Seery for his roles as CEO, CRO, and Foreign Representative of HCM, Trustee of the Highland Claimant Trust, and/or Independent Director of Strand; and
  - l. any future compensation to be paid to Seery as Trustee of the Highland Claimant Trust.
3. All correspondence and/or other documents by or between Stonehill and/or Jessup and any investors in any fund regarding the Claims and/or the acquisition or transfer of the Claims.
  4. Any and all documents reflecting the sources of funding used by Jessup to acquire any of the Claims.
  5. Organizational and formation documents relating to Jessup including, but not limited to, Jessup's certificate of formation, company agreement, bylaws, and the identification of all members and managing members.
  6. Company resolutions prepared by or on behalf of Jessup approving the acquisition of any of the Claims.
  7. Any and all documents reflecting any internal or external audits regarding Jessup's NAV.
  8. Agreements between Stonehill and Jessup regarding management, advisory, or other services provided to Jessup by Stonehill.
  9. Any and all documents reviewed by Stonehill as part of its evaluation and due diligence regarding any of the Claims.
  10. Any documents reflecting any communications with James Dondero;
  11. Annual fund audits relating to Jessup.

12. Jessup's NAV Statements.

13. Documents reflecting the fees or other compensation earned by Stonehill in connection with the investment in, acquisition of, transfer of, and/or management of any of the Claims.

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# Exhibit 4-B

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REPORTER'S RECORD

VOLUME 1 OF 1

COURT OF APPEALS CAUSE NO. 00-00-00000-CV

TRIAL COURT CAUSE NO. DC-23-01004-J

IN RE: ) IN THE DISTRICT COURT  
)  
)  
HUNTER MOUNTAIN )  
INVESTMENT TRUST, ) OF DALLAS COUNTY, TEXAS  
)  
)  
Petitioner. ) 191ST JUDICIAL DISTRICT

PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

On the 22nd day of February 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Gena Slaughter, Judge Presiding, held in Dallas, Dallas County, Texas, and the following proceedings were had, to wit:

Proceedings reported by machine shorthand utilizing computer-assisted realtime transcription.

1 APPEARANCES:

2

3 MR. SAWNIE A. McENTIRE ATTORNEYS FOR PETITIONER  
4 State Bar No. 13590100 Hunter Mountain  
5 PARSONS McENTIRE Investment Trust  
6 McCLEARY, PLLC  
7 1700 Pacific Avenue  
8 Suite 4400  
9 Dallas, Texas 75201  
10 Telephone: (214) 237-4300  
11 Facsimile: (214) 237-4340  
12 Email: smcentire@pmmlaw.com

8

and

9

10 MR. ROGER L. McCLEARY  
11 State Bar No. 13393700  
12 PARSONS McENTIRE  
13 McCLEARY, PLLC  
14 One Riverway  
15 Suite 1800  
16 Houston, Texas 77056  
17 Telephone: (713) 960-7315  
18 Facsimile: (713) 960-7347  
19 Email: rmccleary@pmmlaw.com

15

16

17 MR. DAVID C. SCHULTE ATTORNEY FOR RESPONDENTS  
18 State Bar No. 24037456 Farallon Capital  
19 HOLLAND & KNIGHT, LLP Management, LLC, and  
20 1722 Routh Street Stonehill Capital  
21 Suite 1500 Management LLC  
22 Dallas, Texas 75201  
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PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST'S

RULE 202 PETITION

which was heard on

Wednesday, February 22, 2023

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THE COURT: Okay. Good morning, Counsel.  
We are here in DC-23-01004, In re:

Hunter Mountain Investment Trust.

And who is here for the plaintiff?

MR. McENTIRE: For the petitioner,  
Your Honor, Sawnie McEntire and my partner  
Roger McCleary.

THE COURT: Okay. And then for Farallon?

MR. SCHULTE: My name is David Schulte and  
I represent both of the respondents. It's Farallon  
Capital Management, LLC, and Stonehill Capital  
Management, LLC.

THE COURT: We are here today on a request  
for a 202 petition. I know one of the issues is the  
related suit, but let's just plow into it and we'll  
go from there.

Okay. Counsel?

MR. McENTIRE: May I approach the bench?

THE COURT: Yes, you may.

MR. McENTIRE: And I've given Mr. Schulte  
copies of all these materials.

In the interest of time, I have all the  
key pleadings here, which I will give you a copy of.

1 THE COURT: Thank you.

2 MR. McENTIRE: And this is the evidentiary  
3 submission that we submitted about a week ago.

4 THE COURT: Right.

5 MR. McENTIRE: To the extent you are  
6 interested, it is cross-referenced by exhibit number  
7 to the references in our petition to the docket in the  
8 bankruptcy court.

9 THE COURT: I appreciate that. Otherwise,  
10 I go hunting for stuff.

11 MR. McENTIRE: This is a PowerPoint.

12 THE COURT: Okay.

13 MR. McENTIRE: And, lastly, a proposed  
14 order.

15 THE COURT: Wonderful.

16 MR. McENTIRE: And Mr. Schulte has copies  
17 of it all.

18 THE COURT: Okay.

19 MR. McENTIRE: May I proceed, Your Honor?

20 THE COURT: You may.

21 MR. McENTIRE: All right. Your Honor,  
22 we are here for leave of court to conduct discovery  
23 under Rule 202 to investigate potential claims.

24 The issue before the court is not whether  
25 we have an actual claim.

1 THE COURT: Right.

2 MR. McENTIRE: We do not even need to  
3 state a cause of action. It is simply the investigation  
4 of potential claims.

5 Mr. Mark Patrick is here with us today.  
6 He's behind me. Mr. Patrick is the administrator of  
7 Hunter Mountain, which is a Delaware trust.

8 THE COURT: Okay.

9 MR. McENTIRE: He is the manager of  
10 Rand Advisors, which is also an investment manager  
11 of the trust. And, in effect, for all intents and  
12 purposes, Mr. Patrick manages the assets of the trust on  
13 a daily basis.

14 THE COURT: Okay.

15 MR. McENTIRE: There are potential claims  
16 that we're investigating. And I'll go through some  
17 of these because I know opposing counsel has raised  
18 standing issues.

19 THE COURT: Right.

20 MR. McENTIRE: And I think we can address  
21 all those standing issues.

22 Insider trading is in itself a wrong  
23 as recognized by courts. And I'll refer you to the  
24 opinions. We believe there's a breach of fiduciary  
25 duties, and that may take a little explanation.

1 At the time that Farallon and Stonehill  
2 acquired these claims, through their special purpose  
3 entities Muck and Jessup, they were outsiders.

4 THE COURT: Right.

5 MR. McENTIRE: But by acquiring the  
6 information in the manner in which we believe they did,  
7 they became insiders. And when they became insiders,  
8 under relevant authorities they owe fiduciary duties.

9 And at the time they acquired the claims,  
10 my client Hunter Mountain Investment Trust was the  
11 99.5 percent interest holder or stakeholder in  
12 Highland Capital.

13 THE COURT: Right.

14 MR. McENTIRE: We also believe a knowing  
15 participation of breach of fiduciary duties under  
16 another name, aiding and abetting. But Texas recognizes  
17 it as knowing participation. Unjust enrichment,  
18 constructive trust, and tortious interference.

19 THE COURT: Okay.

20 MR. McENTIRE: Farallon and Stonehill are  
21 effectively hedge funds. And so is Highland Capital.

22 They were created. They actually did  
23 create Muck and Jessup. Those are the two entities  
24 that actually are titled with the claims. They  
25 acquired it literally days before the transfers.

1                   So the reason we're focusing our discovery  
2 effort on Farallon and Stonehill, we are confident  
3 that any meaningful discovery -- emails, letters,  
4 correspondence, document drafts, things of that  
5 nature -- probably predated the existence of  
6 Muck and Jessup.

7                   THE COURT: Right.

8                   MR. McENTIRE: That's why we're focusing  
9 our discovery effort on Farallon and on Stonehill.

10                   But, needless to say, Farallon, Stonehill,  
11 Muck and Jessup, having all participated in this  
12 acquisition, they're all insiders for purposes  
13 of assuming fiduciary duties.

14                   And as I said, outsiders become insiders  
15 under the relevant authority. And one key case is the  
16 Washington Mutual case --

17                   THE COURT: Right.

18                   MR. McENTIRE: -- which we cited in our  
19 materials.

20                   I would also just let you know, this is  
21 not something in total isolation. We understand we're  
22 not privy to the details. But we understand the Texas  
23 State Security Board also has an open investigation that  
24 has not been closed.

25                   THE COURT: Okay.

1 MR. McENTIRE: And that's by way of  
2 background.

3 202 allows presuit discovery for a couple  
4 of reasons. And I won't belabor the point. One is to  
5 investigate potential claims.

6 There is no issue of notice or service  
7 here. There's no issue of personal jurisdiction.  
8 Farallon and Stonehill made a general appearance.

9 THE COURT: Right.

10 MR. McENTIRE: There's no issue concerning  
11 subject-matter jurisdiction. They actually concede that  
12 the court has jurisdiction on page 8 of their response.

13 The court's inquiry today is a limited  
14 judicial inquiry. There are really two avenues which  
15 I'll explain, but, first, I think the salient avenue  
16 is does the benefit of the discovery outweigh the  
17 burden.

18 And I think as I will hopefully  
19 demonstrate, I think that we clearly do.

20 THE COURT: Okay.

21 MR. McENTIRE: The merits of a potential  
22 claim, the case law is clear, is not before the court.

23 Much of their brief and their response  
24 is devoted to trying to attack the fact that there  
25 is no duty or things such as standing.

1 But the reality of it is we are not  
2 required to actually prove up a cause of action to  
3 this court although I think I can. In this process,  
4 I probably certainly can identify a potential cause of  
5 action. That's not our obligation to carry our burden.

6 There was an issue about timely submission  
7 of evidence they raised in a footnote, but I think that  
8 was resolved before the court took the bench.

9 THE COURT: Okay.

10 MR. McENTIRE: I've handed you a binder  
11 with Mr. Mark Patrick's affidavit and Jim Dondero's  
12 affidavit.

13 As I understand it, correct me if I'm  
14 wrong, you're not objecting to the submission of that  
15 evidence. Is that correct?

16 MR. SCHULTE: Almost.

17 THE COURT: Okay.

18 MR. SCHULTE: Your Honor, I do object  
19 to the two declarations that were submitted I believe  
20 five days before the hearing.

21 THE COURT: Okay.

22 MR. SCHULTE: As Your Honor is aware,  
23 Rule 202 contemplates 15 days' notice. The petition  
24 itself was required to be verified. It was verified  
25 and then new substance was added by way of these

1 declarations five days before the hearing.

2 And so we would argue that that has the  
3 effect of amending or supplementing the petition within  
4 that 15-day notice period.

5 All that said, I don't have any issue with  
6 the majority of the documents attached to Mr. Patrick's  
7 declaration.

8 THE COURT: Okay.

9 MR. SCHULTE: So I do object on the  
10 grounds of hearsay and timeliness to the declarations.

11 On Exhibit H to Mr. Patrick's declaration,  
12 I object to that document on the grounds of hearsay.

13 THE COURT: Okay. Which one?

14 MR. SCHULTE: Exhibit H to Mr. Patrick's  
15 declaration on the basis of hearsay.

16 All the other documents are I believe  
17 file-stamped copies of the pleadings filed in the  
18 bankruptcy, which I don't have any issue with that.

19 And then the exhibit to Mr. Dondero's  
20 declaration is an email that's objected to on the basis  
21 of hearsay. And it hasn't been proven up as a business  
22 record or any other way that will get past hearsay.

23 THE COURT: Okay.

24 MR. SCHULTE: So those are the limited  
25 objections I have to what's in that filing, Your Honor.

1 MR. McENTIRE: And I will address those  
2 objections. And we're prepared to put Mr. Patrick on  
3 the stand, if necessary.

4 I would point out that the case law is  
5 very clear that there's no 15-day rule here.

6 THE COURT: Okay.

7 MR. McENTIRE: We have asked the court  
8 to take judicial notice of all of our evidence in our  
9 petition itself.

10 The 15 days is the amount of time you have  
11 to give notice before the hearing --

12 THE COURT: Right.

13 MR. McENTIRE: -- but the case law  
14 is clear that I can put live testimony on, I can  
15 put affidavit testimony on.

16 THE COURT: This is an evidentiary  
17 hearing.

18 MR. McENTIRE: That's correct.

19 And that includes affidavits. And  
20 affidavits are routinely accepted in these types of  
21 proceedings and I have the case law I can cite to the  
22 court.

23 MR. SCHULTE: Your Honor, in contrast,  
24 I think if this were, for example, an injunction  
25 hearing, I don't believe that an affidavit would be

1 the substitute in an injunction hearing for live  
2 testimony.

3 And so if this is an evidentiary standard,  
4 I don't think that these affidavits should come in for  
5 the truth of the matter asserted. The witnesses should  
6 testify to the facts that they want to prove up.

7 MR. McENTIRE: I could give the court a  
8 cite.

9 THE COURT: Okay.

10 MR. McENTIRE: It's Glassdoor, Inc. versus  
11 Andra Group.

12 THE COURT: What was the name of it?

13 MR. McENTIRE: Glassdoor, Inc. versus  
14 Andra Group. It is 560 S.W.3d 281. It specifically  
15 addresses the use and relies upon affidavits in the  
16 record for purposes of a Rule 202.

17 So, with that said, I will address it in  
18 more detail in a moment. The evidentiary rule, to be  
19 clear, is it has to be supported by evidence. Seven  
20 days was the date that I picked because it was well  
21 in advance. It's the standard rule that's used for  
22 discovery issues. It's seven days before a hearing.

23 So I picked it. He's had it for seven  
24 days. He's never filed any written objections to my  
25 evidence. None.

1                   And under the Local Rules I would think  
2 he would have objected within three business days.  
3 He did not do that, and so I'm a little surprised  
4 by the objection.

5                   THE COURT:   Okay.

6                   MR. McENTIRE:   All right.   We do have  
7 copies of all the certified records, but I gave you  
8 the agenda on that.   And we talked about the two  
9 declarations.

10                   So the limited judicial inquiry is the  
11 only issue before the district court.   It's whether  
12 or not to allow the discovery, not the merits of any  
13 claim yea or nay.

14                   THE COURT:   Right.

15                   MR. McENTIRE:   There's no need for us to  
16 even plead a cause of action, although we did.

17                   Mr. Schulte goes to great length in  
18 his response to take issue with our cause of action,  
19 suggesting we had none.   We do.   But we're not even  
20 under an obligation to plead it; nevertheless, we did.

21                   This is actually a two-part test.   The  
22 first part was allowing the petitioner -- in this case,  
23 Hunter Mountain -- to take the requested deposition may  
24 prevent a failure or delay of justice, or the likely  
25 benefit outweighs the burden.   Both apply here.

1                   These trades took place in April of 2021,  
2 three of the four. The fourth I think took place in the  
3 summer.

4                   And our goal is to obtain the discovery  
5 in a timely manner so we do not have any argument, valid  
6 or invalid, that there's a limitations issue.

7                   THE COURT: Okay.

8                   MR. McENTIRE: And so any further delay,  
9 such as transferring this to another court or back to  
10 the bankruptcy court, which it does not have  
11 jurisdiction, would cause tremendous delay.

12                   THE COURT: Okay.

13                   MR. McENTIRE: Hunter Mountain, a little  
14 bit of background. It is an investment trust. When  
15 it has money, it participates directly in funding the  
16 Dallas Foundation --

17                   THE COURT: Okay.

18                   MR. McENTIRE: -- which is a very I think  
19 well-respected and recognized charitable foundation.

20                   Certain individuals and pastors from  
21 various churches are actually here because Hunter  
22 Mountain indirectly, but ultimately, provides a  
23 significant source of funding for their outreach  
24 programs and their charitable functions and programs.

25                   THE COURT: Okay.

1 MR. McENTIRE: The empirical evidence in  
2 the documents that are before the court, regardless of  
3 what's in the affidavits, just screams that there was  
4 no due diligence here.

5 Now, we know in Mr. Dondero's affidavit  
6 he had a conversation with representatives of Farallon,  
7 which would be admissions against interest. They're  
8 admissions basically against interest that they  
9 effectively did no due diligence.

10 Yet we believe, upon information and  
11 belief, that they invested over \$167 million. There  
12 are two sets of claims. There's a Class 8 claim and  
13 a Class 9 creditor claim.

14 THE COURT: Right.

15 MR. McENTIRE: Their expectations at the  
16 time that they acquired these claims was that Class 9  
17 would get zero recovery.

18 So who spends \$167 million when their  
19 expectation on return of investment is zero? Who spends  
20 \$167 million even in Class 8 when the expected return is  
21 just 71 percent and is actually declining? And I think  
22 it's actually admitted in the affidavit that Mr. Dondero  
23 provided.

24 So without being hyperbolic or  
25 exaggerating, the data that was available publicly

1 was extremely pessimistic and doubtful that there would  
2 be any recovery.

3 We have direct information -- admissions,  
4 frankly -- that Farallon had access to non-public  
5 material, non-public information. And that was  
6 the fact that MGM Studios was up for sale.

7 Mr. Dondero was on the board of directors.

8 THE COURT: Okay.

9 MR. McENTIRE: He communicated, because  
10 of his responsibilities, this information to Mr. Seery.

11 And Mr. Seery, apparently, would have been  
12 restricted. He couldn't use it or distribute it.

13 THE COURT: Right.

14 And I don't know a lot about securities  
15 law but, yeah, that would be insider information.

16 Right?

17 MR. McENTIRE: Yes.

18 And it appears from the affidavit that  
19 Mr. Dondero submitted that Farallon was aware of the  
20 information before the sale closed, before they closed  
21 their acquisitions.

22 And Mr. Dondero asked the question are  
23 you willing to even sell your claims and they said no.  
24 Or even 30 percent more and they said no. We're told  
25 that they're going to be very valuable.

1 Well, no one else had this information, so  
2 we have a problem here that we have two outsiders who  
3 are now insiders. They've acquired potentially very  
4 valuable claims with the sale of MGM.

5 They also acquired information concerning  
6 the portfolios of these companies over which Highland  
7 Capital managed and had ownership interests, so we're  
8 talking about having access to information that any  
9 other bidder or suitor would not have.

10 So this is how they were divided up.  
11 \$270 million in Class 8. Each of the creditors  
12 right here are the unsecured creditors who sold.  
13 They were the sellers.

14 THE COURT: Right.

15 MR. McENTIRE: And these are the claims in  
16 the Class 9.

17 So you have \$95 million in Class 9 claims  
18 that are being acquired when the expectation is that  
19 there will be zero return on investment. You have  
20 \$270 million where the expectation was extremely  
21 low and pessimistic.

22 And here are the documents. And  
23 Mr. Schulte has not objected to these. This particular  
24 document is Exhibit 1-J to Mr. Patrick's affidavit.

25 THE COURT: Okay.

1 MR. McENTIRE: This came out of the plan.  
2 So when the bankruptcy plan was confirmed in February  
3 2021, Farallon, Stonehill, Muck and Jessup, the latter  
4 two weren't even in existence.

5 THE COURT: Right.

6 MR. McENTIRE: Farallon and Stonehill were  
7 complete strangers to the bankruptcy proceedings, yet  
8 they come in in the wake of this information and  
9 they invest tens if not hundreds of millions of  
10 dollars with no apparent due diligence.

11 The situation gets even worse. And this  
12 is Exhibit 1-I to Mr. Patrick's affidavit. And as  
13 I understand, Mr. Schulte does not object to these  
14 documents. It's declining. And then, suddenly,  
15 they're in the money.

16 And at the end of the third quarter last  
17 year, they're already making 255 million bucks. And  
18 that's a far cry from the original investment. This  
19 is for both Class 8 and Class 9.

20 So Mr. Patrick states the purpose of  
21 this is to seek cancellation. Another word for it  
22 in bankruptcy-ese would be disallowance. But the  
23 cancellation of these claims and disgorgement.

24 If these are ill-gotten gains, regardless  
25 of the rubric or the monicker that you place on it --

1 breach of fiduciary duty as insiders, aiding and  
2 abetting or knowing participation in fiduciary duties,  
3 because a lot of people have fiduciary duties on this  
4 stuff. No matter what you call it, disgorgement is a  
5 remedy.

6 Wrongdoers should not be entitled to  
7 profit from their wrongdoing.

8 Mr. Schulte makes a big point that we  
9 can't prove damages. Well, first of all, I don't agree  
10 with the conclusion.

11 THE COURT: Right.

12 MR. McENTIRE: But even if he was right,  
13 disgorgement is a proxy for damages. And we have an  
14 entitlement and a right to explore how much they have  
15 actually received, when did they receive it.

16 The weathervane is tilting in one  
17 direction here, Judge.

18 Clearly, there is a creditor trust  
19 agreement. That's a very important document. It spells  
20 out rights and obligations. It's part of the plan.

21 There's a waterfall. And on page 27 of  
22 the creditor trust agreement a waterfall is exactly  
23 what it suggests. You have one bucket gets full,  
24 you go to the next bucket all the way down.

25 THE COURT: Class 1 or tier 1.

1 I can't remember the category. I don't  
2 do bankruptcy. But, yeah, those get paid, then the  
3 next level, then the next level.

4 So by the time you get down to  
5 level 10, which I think is what Hunter Mountain was,  
6 theoretically, there wouldn't have been anything left.

7 MR. McENTIRE: That's correct.

8 But here, if Class 8 and Class 9 -- and  
9 I will say the big elephant in those two classes are  
10 Farallon and Stonehill or their special purpose entity  
11 bucket Jessup -- they have 95 percent of that category.

12 And suddenly they're not entitled to keep  
13 what they've got, and suddenly there's a disallowance,  
14 or suddenly a cancellation regardless of the theory  
15 or the cause of action -- and we have several avenues  
16 here -- a lot of money is going to flow into the  
17 coffers of Hunter Mountain, and a lot of money will flow  
18 into the Dallas Foundation, and a lot of money will flow  
19 into the coffers of charities.

20 So there is standing here. Standing  
21 requires the existence of a duty. We think we have  
22 duties.

23 And a concrete injury. And if these  
24 claims were manipulated, we have a concrete injury  
25 and our proxy is disgorgement.

1 We've been deprived of an opportunity to  
2 share in category 10 or as we just described it in the  
3 waterfall under the creditor trust agreement.

4 THE COURT: Right.

5 MR. McENTIRE: Their burden is to show  
6 that this discovery has no benefit. No. That's my  
7 burden to show benefit. But their burden would be  
8 to show that it's overly burdensome to them.

9 And I find that difficult to understand  
10 since part of their response is devoted to the fact  
11 that, hey, judge in Dallas County, you should turn  
12 this over to Judge Jernigan in the bankruptcy court.

13 THE COURT: Because it's bankruptcy,  
14 you know.

15 MR. McENTIRE: In bankruptcy, that's their  
16 invitation.

17 THE COURT: Right.

18 MR. McENTIRE: Well, if they're inviting  
19 us to go do the discovery in bankruptcy court, it  
20 doesn't seem to be that burdensome because it's  
21 going to be the same discovery.

22 And, by the way, Judge Jernigan actually  
23 does not have jurisdiction over these proceedings.  
24 The other earlier proceeding, as you know, they  
25 attempted to remove it to her court and it was remanded.

1 Clearly, she does not have jurisdiction.

2 The problem with bankruptcy involved,  
3 in addition, if I wanted to do Rule 2004 discovery like  
4 they're suggesting, that's their invitation. They would  
5 like you to push us down the road.

6 Well, we can't afford to push it down the  
7 road. Because if they push it down the road, I've got  
8 to go file a motion with Judge Jernigan, get leave to  
9 issue subpoenas.

10 THE COURT: Right.

11 MR. McENTIRE: They have 14 days to file  
12 a motion to quash, then I have to file another motion.  
13 And it's 21 days before their response is even filed.  
14 And there's another 14 or 15 days before the reply is  
15 filed. We're looking at 60, 70 days. And that's one  
16 of the reasons we selected this procedure.

17 And, by the way, you hear the phrase forum  
18 shopping a lot. Well, without engaging in the negative  
19 inference that that term suggests, a plaintiff, a  
20 petitioner, has the right to select its venue for a  
21 variety of reasons.

22 Our venue is the state district courts  
23 of Texas because it has an accelerated procedure. And  
24 that's why we're here.

25 THE COURT: Right.

1 MR. McENTIRE: I've identified the  
2 potential causes of action. Entities or people that  
3 breach fiduciary duties and receive ill-gotten gains  
4 a constructive trust may be imposed, disgorgement.  
5 Then we do run into bankruptcy concepts.

6 But it's important to know that some of  
7 these are not bankruptcy. Some of these are common law.

8 I suggest to the court, I don't have to  
9 go get Judge Jernigan's permission to sue Farallon or  
10 Stonehill for breach of fiduciary duties. I don't have  
11 to get her permission to sue for knowing participation.

12 If I'm actually looking for equitable  
13 disallowance, probably, maybe. But I can do the  
14 discovery here and then make that decision whether  
15 I need to go back to bankruptcy court.

16 I'm not foolish. I'm not going to run  
17 afoul of Judge Jernigan's orders. If I have to go back  
18 to Judge Jernigan to get permission, I will do it.

19 THE COURT: Right. Because only an  
20 idiot runs afoul of the bankruptcy court.

21 MR. McENTIRE: Hopefully, I'm not that.

22 So I clearly understand what both my  
23 ethical and lawyer obligations are. And I'm not  
24 going to run afoul of any court orders.

25 But some of these remedies don't require

1 an overview by Judge Jernigan or the bankruptcy court.

2 THE COURT: Okay.

3 MR. McENTIRE: They have a duty not to  
4 commit fraud, whether it's commit fraud against us or  
5 commit fraud against the estate.

6 They have a duty not to interfere with  
7 the expectancies that we have as a B/C beneficiary.  
8 That's a code name for a former Class 10 creditor.

9 They have a duty not to trade on inside  
10 information, and that's the Washington Mutual case.

11 And I've just already mentioned that  
12 because they were outsiders, they're insiders now.

13 These are their arguments. Our evidence  
14 is timely. It's not untimely. It's not speculative.  
15 It's not speculative because the events have already  
16 taken place. I'm not talking about something  
17 hypothetical.

18 THE COURT: Right.

19 MR. McENTIRE: My remedy flows from that.  
20 So we're not projecting that I might have  
21 a claim later on. I have a claim today. If I have a  
22 claim today, I have it today. I have it and I want to  
23 confirm it by this discovery. Because their wrongdoing  
24 has already taken place, it's not hypothetical, it's not  
25 futuristic, it's already occurred.

1                   When they say they have no duty to us,  
2 they're just wrong. They have duties not to breach  
3 fiduciary duties. We have direct standing I believe to  
4 bring a claim in that regard.

5                   We have a right to bring direct standing  
6 under the Washington Mutual case, which I'll discuss.

7                   And we also have a right to bring a  
8 derivative action.

9                   THE COURT: Right.

10                  MR. McENTIRE: And I notice that  
11 they made a comment about that in their response.  
12 But I can sue individually.

13                  And I can also bring an action in the  
14 alternative as a derivative action for the estate.  
15 And these are all valid claims for the estate.

16                  THE COURT: Okay.

17                  MR. McENTIRE: Transfer. This is not a  
18 related case because it's not the litigation.

19                  So if you just go to the very first  
20 instance and you look at the Local Rule, it talks  
21 about litigation and causes of action.

22                  THE COURT: Right.

23                  MR. McENTIRE: We don't have a cause  
24 of action. We're not asserting one in this petition.  
25 So this is not a related case that falls within the

1 four corners of the Local Rule.

2 THE COURT: Well, I guess the thing  
3 is it's still a related case. Like if you file a 202  
4 and then you file a lawsuit, that would be considered  
5 related.

6 I looked at it and you're right.  
7 Technically, it's different parties. I'll just say it's  
8 a grey zone at best.

9 MR. McENTIRE: That's correct.

10 This is not a lawsuit in terms of causes  
11 of action. It might be a related case if Mr. Dondero  
12 had come in and filed a lawsuit. That would be a  
13 related case. Mr. Dondero is not involved in this  
14 process, other than as a fact witness.

15 These are all the evidentiary issues  
16 that perhaps he's raised. Live testimony, affidavit  
17 testimony is admissible.

18 The court considered numerous affidavits  
19 filed with the court. And that's as recently as 2017.  
20 These are all good cases, good law.

21 Equitable disallowance. It's kind of a  
22 fuzzy image. This is a bankruptcy court case, but this  
23 is simply to underscore the fact that in addition to  
24 my common law remedies there is a very substantial  
25 remedy in bankruptcy court.

1                   It's not one I necessarily have to pursue,  
2 but if I wanted to I could. But what it does do is it  
3 helps to find some duties.

4                   And here, the court has the right  
5 to disallow a claim on equitable grounds in extreme  
6 instances, perhaps very rare, where it is necessary  
7 as a remedy. And they did it in this case.

8                   THE COURT: Okay.

9                   MR. McENTIRE: This is simply an analogy  
10 to securities fraud and the 10b-5 statute.

11                   Insiders of a corporation are not limited  
12 to officers and directors, but may include temporary  
13 insiders who have entered into a special confidential  
14 relationship in the conduct of the business of the  
15 enterprise and are given access to information solely  
16 for corporate purposes.

17                   Well, what about the MGM stock? The court  
18 finds that the Equity Committee -- so here's the  
19 equity -- has stated a colorable claim. We were  
20 99.5 percent equity.

21                   The Equity Committee has stated a  
22 colorable claim that the settlement noteholders became  
23 temporary insiders because they acquired information  
24 that was not of public knowledge in connection with  
25 their acquisition.

1 And allowed them to participate in  
2 negotiations with JPMC -- JPMorgan Chase -- for the  
3 shared goal of reaching a settlement.

4 So these were outsiders that suddenly  
5 became temporary insiders because of access to inside  
6 information.

7 This is not a new concept. It comes  
8 from the United States Supreme Court. Fiduciaries  
9 cannot utilize inside information.

10 THE COURT: Right.

11 MR. McENTIRE: And we believe we  
12 have enough before the court to support and justify  
13 a further investigation that this may have occurred.

14 THE COURT: Okay.

15 MR. McENTIRE: Now, not a related case.  
16 The Jim Dondero case is actually closed.

17 THE COURT: Right.

18 MR. McENTIRE: And I'll be frank with you.  
19 In all candor, I never thought this was a possible  
20 related case.

21 THE COURT: I mean, we're talking about  
22 the same events, but there are differences, I agree.

23 MR. McENTIRE: We're talking about one  
24 similar event dealing with Farallon. Other events  
25 are different.

1 THE COURT: Okay.

2 MR. McENTIRE: So we have different dates.

3 THE COURT: Right.

4 MR. McENTIRE: Different parties on the  
5 petitioner's side, different law firms.

6 The only common party is Farallon.

7 Alvarez & Marsal are not parties to this but Stonehill  
8 is. Stonehill was not a party to the prior proceedings.

9 And the standing is manifest. With no  
10 criticism of Mr. Dondero's lawyer, I searched in his  
11 argument where he was articulating standing.

12 And without going further, I will tell  
13 you I think our standing is clear. We're in the money.

14 THE COURT: Okay.

15 MR. McENTIRE: We are in the money if  
16 there's a disgorgement or a disallowance.

17 THE COURT: Okay.

18 MR. McENTIRE: We have all types of  
19 claims, including insider trading and a creation of  
20 fiduciary duties.

21 Our remedies, as far as I can tell, he  
22 didn't identify any. We have several. Disgorgement,  
23 disallowance, subordination, a variety. And damages.

24 So we suggest strongly that it is not a  
25 related case.

1                   And I must tell you, the reference  
2 to say send this to bankruptcy court or defer to the  
3 bankruptcy court or send us over to Judge Purdy, with  
4 all due respect to opposing counsel, it's really just  
5 a delay mechanism.

6                   And what they're seeking to do through  
7 their invective, their criticisms, the references to  
8 these other courts, is seeking an opportunity to push us  
9 down the road and put us in a bad position potentially  
10 and a not enviable position in connection with statute  
11 of limitations.

12                   Your Honor, we would offer the binder  
13 of exhibits that we submitted on February 15, 2022,  
14 including the affidavits and all the attached exhibits.

15                   I would ask the court to take judicial  
16 notice of all the exhibits that we referred to in our  
17 petition, which I think is appropriate since we were  
18 specifying with particularity what we were requesting  
19 the court to take judicial notice of. And that's the  
20 large index, that's the list.

21                   THE COURT: Obviously, I can take  
22 judicial notice of any kind of court pleadings,  
23 whether they're state or federal.

24                   MR. McENTIRE: That's correct.

25                   THE COURT: That's clear.

1 MR. McENTIRE: We would offer both  
2 affidavits and all the attachments into evidence  
3 at this time.

4 THE COURT: Okay. Do you have exhibit  
5 numbers for them?

6 MR. McENTIRE: Yes. It's Exhibit 1 with  
7 attachments. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F and then  
8 Exhibit 1-G, Exhibit 1-H, Exhibit 1-J, Exhibit 1-K.

9 Everything in the binder, Your Honor.  
10 It's Exhibit 1 and Exhibit 2 with the attachments.

11 THE COURT: Okay.

12 MR. McENTIRE: I believe they're all  
13 identified. I can put a sticker on them, if you'd like.

14 THE COURT: Yeah. To admit them, it will  
15 need a sticker.

16 So I'm going to hold off on admitting  
17 them for just a minute because I do want to hear his  
18 objections and then we can go back to it. So just make  
19 sure we do that.

20 I'm not trying to not admit them, but I do  
21 want to let him have his objections.

22 Okay. Anything else, Counsel?

23 MR. McENTIRE: That's all I have right  
24 now, Judge.

25 THE COURT: Okay. Counsel?

1 MR. SCHULTE: Should I start with those  
2 exhibits, Your Honor?

3 THE COURT: Why don't you do that. That's  
4 probably the easiest way.

5 MR. SCHULTE: In light of the authorities  
6 that Mr. McEntire shared about the affidavits, I'll  
7 withdraw the objections to the affidavits or the  
8 declarations.

9 THE COURT: Okay.

10 MR. SCHULTE: I'm taking Mr. McEntire's  
11 word that those cases say what he says they say.

12 THE COURT: I'll tell you because 202  
13 is not a lawsuit, you don't necessarily have a right  
14 to cross-examine, et cetera. So, yeah, affidavits are  
15 frequently used on 202s.

16 MR. SCHULTE: And that's fine, Your Honor.  
17 I'll take Mr. McEntire's word what those cases say.

18 But I will maintain the objection to  
19 Exhibit H -- it's the declaration of Mr. Patrick --  
20 on the grounds of hearsay. That is not a court record  
21 or a file-stamped pleading from federal or state court.  
22 It's just a letter. So that's hearsay. And it hasn't  
23 been properly authenticated.

24 The other issue is the exhibit to  
25 Mr. Dondero's declaration. That's just an email

1 from Mr. Dondero, so I object on the grounds of hearsay.

2 THE COURT: Mr. McEntire, what's your  
3 response specifically to Exhibit H as attached to  
4 the Patrick declaration and then the attachment  
5 to the Dondero declaration?

6 MR. McENTIRE: Exhibit H to Mr. Patrick's  
7 affidavit would be hearsay, but there's an exception  
8 that it's not controversial.

9 THE COURT: Okay.

10 MR. McENTIRE: And there's no indication  
11 that there's any challenge of the reliability of the  
12 document.

13 THE COURT: What is the exhibit?  
14 I'm trying to pull it up. Sorry.

15 MR. McENTIRE: It's Exhibit 1-H. It is  
16 a letter from Alvarez & Marsal simply indicating what  
17 they paid for the claim.

18 THE COURT: Is it the July 6th, 2021,  
19 letter?

20 MR. McENTIRE: Yes, Your Honor.

21 THE COURT: I've got it.

22 MR. McENTIRE: And the exhibit to  
23 Mr. Dondero's is not being offered for the truth of  
24 the matter asserted, just the state of mind of Farallon.

25 THE COURT: Okay.

1 MR. McENTIRE: He has proved it up  
2 that it's authentic. It's a true and accurate copy.

3 And it goes to the state of mind of  
4 Farallon and it goes to the state of mind of Mr. Seery  
5 as well who are basically individuals who are trading on  
6 inside information.

7 And Mr. Seery would not have known about  
8 the MGM sale but for that email. And Farallon and  
9 Stonehill would not know about MGM but for Mr. Seery.

10 THE COURT: Okay. So the response to  
11 hearsay is that it goes to state of mind.

12 MR. McENTIRE: It goes to state of mind.

13 THE COURT: Okay, Counsel. How do you  
14 respond to that?

15 MR. SCHULTE: I'll start with the last  
16 one, Your Honor. I think that's the definition of  
17 hearsay, is that you're purporting to establish the  
18 state of mind of the parties who are not before the  
19 court.

20 It's been emphasized that Mr. Dondero has  
21 no relation to HMIT. And none of the recipients of the  
22 email are parties to this proceeding.

23 This purports to establish the state of  
24 mind of Mr. Seery, who is not before the court, and the  
25 state of mind of Farallon, just based on the say so of

1 Mr. Dondero in this email. That's hearsay.

2 And as for the first letter, this is a  
3 letter on the letterhead of A&M which, by the way, is  
4 one of the parties in the Dondero Rule 202 petition.

5 And it's not on the letterhead of any of  
6 the parties to this case so the letter isn't properly  
7 authenticated.

8 And I'm not aware of the not controversial  
9 exception to hearsay.

10 THE COURT: Well, there is a thing that  
11 talks about if you're admitting something that's just  
12 not controverted. Right? It's everybody agrees "X"  
13 happened. We're just admitting evidence to have that.  
14 So what this basically is is just showing the claim of  
15 the funds.

16 And I guess my question is what's the  
17 objection. Is there an objection to the substance of  
18 it?

19 MR. SCHULTE: I don't think there's any  
20 dispute that Farallon and Stonehill, through their  
21 respective special purpose entities, purchased the  
22 claims that are at issue here.

23 And if that's the sole purpose  
24 of admitting this letter into evidence, I don't  
25 think that's a matter that's genuinely in dispute.

1 THE COURT: Okay.

2 MR. SCHULTE: So if that's the only issue  
3 as raised by this letter, I don't know that there's a  
4 dispute there.

5 THE COURT: Right. Well, that's the whole  
6 thing.

7 MR. McENTIRE: I think we're almost  
8 solving the issue on the fact of how much they paid,  
9 \$75 million.

10 THE COURT: Okay. So I will sustain the  
11 objection to the email to Mr. Dondero's declaration,  
12 Exhibit P 2-1.

13 I am going to overrule the objection  
14 to -- I don't know what the letter is of the attachment.

15 MR. McENTIRE: It's Exhibit P 1-H to  
16 Mr. Patrick's affidavit.

17 THE COURT: Correct. Sorry.

18 Okay, Counsel. If you'll proceed.

19 MR. SCHULTE: May I approach the bench,  
20 Your Honor? I have a binder of exhibits also.

21 THE COURT: Yes, you may.

22 MR. SCHULTE: These have all been  
23 marked with exhibit stickers already. There are tabs  
24 for each of the exhibits. They're marked R1 through 17,  
25 I believe. And "R," of course, stands for Respondents.

1 THE COURT: I take the shortcut of calling  
2 everybody "Plaintiff" and "Defendant" just because  
3 I'm so used to using that language in court.

4 But I do agree. It's Petitioner  
5 and Respondent. You're not technically a defendant.

6 Okay. So, first of all, I'm going to  
7 admit Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2,  
8 with the sole exception of the email to Mr. Dondero's  
9 declaration that I sustained.

10 And then are there objections to the  
11 respondent's exhibits?

12 MR. McENTIRE: Very few.

13 I object to Exhibit No. 1 and  
14 Exhibit No. 2 as irrelevant.

15 THE COURT: What's the objection to 1?

16 MR. McENTIRE: They're offering the order  
17 from Judge Purdy.

18 THE COURT: Okay. I can take judicial  
19 notice of that. I mean, it's a court record from  
20 Dallas County. So I don't think that that's  
21 particularly relevant.

22 To be bluntly honest, I looked at it last  
23 night. Right? Because of the issue that there's  
24 a related case, I pulled that file too and looked  
25 at everything.

1                   So I can take judicial notice of that.  
2   Whether it's relevant or not, I can look at it.  And,  
3   obviously, if it's not relevant, I'll disregard it.

4                   MR. McENTIRE:  Fair enough.

5                   THE COURT:  I'll overrule that objection.  
6                   What's next?

7                   MR. McENTIRE:  The only other objections  
8   are Exhibit 12 and 13.  I just don't know what they  
9   are or for what purpose they would be offered.

10                  THE COURT:  Okay.  So 12 is a notice of  
11   appearance and request for service in the bankruptcy  
12   court on behalf of Hunter Mountain Trust.

13                  So what's the issue, Counsel?

14                  MR. SCHULTE:  Your Honor, these are  
15   notices of appearance filed by Hunter Mountain in the  
16   bankruptcy court.

17                  And the purpose of these notices is simply  
18   to show -- and maybe this is not genuinely in dispute --  
19   that Hunter Mountain, through its counsel, would have  
20   received notice of all the activity that was going on  
21   in the bankruptcy court.

22                  THE COURT:  It's the same issue I've  
23   got with everything that Plaintiff submitted.  It's a  
24   bankruptcy pleading.  I can take notice of it.  If it's  
25   irrelevant, I'll disregard it.

1 So I'll overrule that objection.

2 And then what's 13?

3 MR. McENTIRE: The same objection.

4 THE COURT: I'll overrule it because  
5 again, I can take judicial notice of those.

6 MR. McENTIRE: No other objections,  
7 Your Honor.

8 THE COURT: So Respondent's Exhibits  
9 1 through 17 are so admitted.

10 MR. SCHULTE: May I proceed, Your Honor?

11 THE COURT: Yes, you may.

12 MR. SCHULTE: HMIT -- Hunter Mountain --  
13 races into this court seeking extensive and burdensome  
14 presuit discovery about claims trading that took place  
15 in the Highland bankruptcy two years ago.

16 Mr. McEntire has talked about the harm  
17 that would result from delay if a different court were  
18 to consider this request for presuit discovery. That is  
19 a function of waiting two years after the subject claims  
20 transfers to seek relief in this court.

21 The exact same allegations of claims  
22 trading and misconduct by Jim Seery -- those allegations  
23 are not on the slides that you looked at. But those  
24 allegations are common in Mr. Dondero's Rule 202  
25 petition and this petition.

1 THE COURT: Right. They're common.

2 I know you make the allegation that  
3 Dondero is related to Hunter Mountain, but I guess  
4 I don't have any evidence of that.

5 Or do you have evidence of that? Because  
6 otherwise, while it involves some of the same issues in  
7 the sense of the underlying facts, technically Farallon  
8 is the common respondent.

9 But there's a different respondent and  
10 there's a different petitioner in that case.

11 MR. SCHULTE: Yes. That's true,  
12 Your Honor. And we've said that on information and  
13 belief.

14 THE COURT: Okay.

15 MR. SCHULTE: That's our suspicion.

16 We believe that to be the case, but  
17 I don't have evidence of it. I didn't hear a denial  
18 of it, but, nevertheless, that is where things stand.

19 But what's important about the case is  
20 even if this court and Judge Purdy determined that the  
21 cases are not related, what is important is that the  
22 same allegations related to this claims trading and the  
23 same allegations of inside information being shared by  
24 Mr. Seery, those were front and center in the July 2021  
25 petition filed by Mr. Dondero.

1 Even if there are other dissimilarities  
2 between the cases, those are issues that are common.

3 THE COURT: Okay.

4 MR. SCHULTE: And it's important to note  
5 that as HMIT has filed this petition, it has glossed  
6 over issues of its own standing and the assertion of  
7 viable claims that will justify this discovery.

8 Now, I know that HMIT has cited these  
9 cases that say, Your Honor, I don't have to state a  
10 really specific claim right now.

11 But you do have to articulate some ground  
12 for relief, some theory, that would justify the expense  
13 and the burden that you're trying to put the respondents  
14 to in responding to all this discovery.

15 And this isn't simple discovery.  
16 We're talking about deposition topics with I believe  
17 29 topics each and 13 sets of really broad discovery  
18 requests with a bunch of subcategories.

19 THE COURT: Right.

20 MR. SCHULTE: We're not talking about some  
21 minimal burden here. This is an intrusion into entities  
22 that are not parties to a lawsuit, but rather this  
23 investigation.

24 And HMIT has ignored that there is  
25 a specific mechanism in the bankruptcy court that's

1 available to it under federal bankruptcy Rule 2004 and  
2 that the substance of HMIT's petition, which is claims  
3 trading and bankruptcy, falls squarely within the  
4 expertise of Judge Jernigan, the presiding bankruptcy  
5 judge.

6 THE COURT: And I agree. You could do  
7 this in federal court. But there's a lot of things  
8 that can be done in state court or done in federal  
9 court.

10 They get to choose the method of getting  
11 the information, so why should I say, theoretically,  
12 yes, this is a good thing, I should do it, but, hey,  
13 send it to bankruptcy. Why?

14 MR. SCHULTE: The bankruptcy judge has  
15 actually answered that question directly.

16 THE COURT: Okay.

17 MR. SCHULTE: It is true, as HMIT  
18 has said, the federal bankruptcy court doesn't have  
19 jurisdiction over a Rule 202 proceeding. That's not in  
20 dispute.

21 THE COURT: Right.

22 MR. SCHULTE: We tried to remove the  
23 last case to federal bankruptcy court and it was a state  
24 claim.

25 But what the bankruptcy judge pointed out

1 when she remanded the case back to Judge Purdy, who  
2 ended up dismissing Dondero's petition, is it pointed  
3 out, one, there's this mechanism in bankruptcy where  
4 they can do the exact same thing, Rule 2004.

5 And the bankruptcy judge pointed out that  
6 it is in the best position to consider Hunter Mountain's  
7 request.

8 It pointed out when it remanded the  
9 case that it had grave misgivings about doing so.  
10 It confirmed that it is in the best position to  
11 consider this presuit discovery.

12 THE COURT: Okay. This is part of one of  
13 the exhibits?

14 MR. SCHULTE: Yes, Your Honor. This is  
15 in one of the opinions that I included in the binder,  
16 a courtesy copy of one of those opinions.

17 THE COURT: Oh, at the back?

18 MR. SCHULTE: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. SCHULTE: It's 2022 Bankruptcy  
21 Lexis 5.

22 THE COURT: Okay. I got it.

23 And real quick, for the record,  
24 it's Dondero versus Alvarez & Marsal. It's  
25 2022 Bankruptcy Lexis 5.

1 MR. SCHULTE: Right.

2 And in particular, Your Honor, I'm looking  
3 at pages 31 to 32 of that order.

4 THE COURT: Okay.

5 MR. SCHULTE: What the judge is pointing  
6 out here is it has grave misgivings about remanding the  
7 case because it knows a thing or two about the Highland  
8 bankruptcy, having presided over the case and all the  
9 related litigation for over what's now three years.

10 And it's familiar with the legal  
11 and factual issues. It's familiar with the parties.  
12 It's familiar with claims trading in a bankruptcy case,  
13 which was the very crux of the Dondero petition. It's  
14 also the crux of this petition by Hunter Mountain.

15 And it observed, the bankruptcy court  
16 did, that any case that could be fashioned from the  
17 investigation would end up in bankruptcy court anyway  
18 because it would be related to the Highland bankruptcy.

19 So you ask a really good question,  
20 Your Honor. Why should I ship it off to the bankruptcy  
21 court. The answer is Judge Jernigan is in a position  
22 to efficiently and practically deal with this request  
23 because she deals with it all the time and she is  
24 intimately familiar with the legal and factual  
25 issues and with claims trading.

1                   It's not like Hunter Mountain gets poured  
2 out if it goes to bankruptcy court. It has a mechanism  
3 to seek the exact same discovery from Judge Jernigan who  
4 is very familiar with these very particular issues.

5                   Now, Hunter Mountain says, well,  
6 bankruptcy court is too time-consuming and cumbersome.  
7 It's going to take 60 days to even get this before the  
8 bankruptcy court.

9                   Well, we're talking about the fact that  
10 they've waited two years to file this proceeding related  
11 to these claims transfers that took place in 2021.

12                   So, again, what HMIT is asking this court  
13 to do is inefficient and is impractical. This court  
14 would need to devote a lot of resources to understand  
15 what the proper scope of any discovery should be,  
16 whether the claims are cognizable.

17                   And that's just a tall order, Your Honor.  
18 The request is more appropriately dealt with by the  
19 bankruptcy judge, according to a proper bankruptcy  
20 filing.

21                   It's undisputed that while the bankruptcy  
22 court doesn't have jurisdiction over a 202 petition,  
23 there's no question that it has jurisdiction over a Rule  
24 2004 request for discovery, which is the counterpart  
25 for this type of discovery in bankruptcy court.

1 THE COURT: Right.

2 MR. SCHULTE: The real issue, Your Honor,  
3 and this is the part that Hunter Mountain is dancing  
4 around, is that Hunter Mountain doesn't want to be  
5 in front of Judge Jernigan.

6 Judge Jernigan held Mark Patrick --  
7 that is HMIT's principal who verified this petition.  
8 She held him along with Dondero and Dondero's counsel  
9 and others in civil contempt and sanctioned them nearly  
10 \$240,000 for trying to join Seery to a lawsuit in  
11 violation of Judge Jernigan's gatekeeping orders.

12 HMIT is trying to dodge the bankruptcy  
13 court and its scrutiny of what HMIT is doing as this  
14 petition also targets Seery and the inside information  
15 that he purportedly gave to Farallon and Stonehill.

16 This is forum shopping, plain and simple.  
17 And the court should dismiss the petition so that HMIT  
18 can seek this discovery in bankruptcy court.

19 Now, I don't want to spend a lot of time  
20 on the related case, but I will emphasize just what I've  
21 mentioned, which is while some of the parties may be  
22 different, we're still talking about the same claims  
23 trading activity that took place in 2021 and the same  
24 allegations of insider dealing by Seery.

25 And Judge Purdy, on remand, dismissed

1 that petition where some of the same arguments were made  
2 about judicial efficiency and that the case should be  
3 filed in bankruptcy court.

4 And it bears noting, by the way, that  
5 after Judge Purdy dismissed Dondero's Rule 202 petition,  
6 where we had argued that this ought to be in the  
7 bankruptcy court, Dondero didn't file in the bankruptcy  
8 court, which sort of makes the point that they didn't  
9 want to be in front of Judge Jernigan on this either.

10 Okay. Now let's turn to the merits,  
11 Your Honor. While Mr. McEntire has gone to great  
12 lengths to say we don't have to state claims, he stated  
13 five or six on that PowerPoint presentation of claims  
14 that he envisions.

15 But what made it all really crystal clear  
16 is in that notice of supplemental evidence, and that  
17 includes the declaration of Mr. Patrick, there in  
18 paragraphs 15 and 16 it's made clear what Hunter  
19 Mountain really wants.

20 THE COURT: Okay.

21 MR. SCHULTE: What the goal of this  
22 discovery is is to invalidate the claims that Farallon  
23 and Stonehill's entities purchased.

24 So let's unpack what it is they purchased.

25 THE COURT: Okay.

1 MR. SCHULTE: These are claims that were  
2 not ever held by Hunter Mountain. These are claims  
3 that were held by Redeemer, Acis, UBS, and HarbourVest.

4 THE COURT: Right. They were the Class 8  
5 and 9. Right?

6 MR. SCHULTE: I believe that's correct.

7 THE COURT: Okay.

8 MR. SCHULTE: Those claims were always  
9 superior to whatever it was that Hunter Mountain held.

10 So Redeemer, Acis, UBS, and HarbourVest  
11 held those claims. The parties in the bankruptcy had  
12 the opportunity to file objections to those claims.  
13 And they did.

14 And Seery, on behalf of the debtor,  
15 negotiated with Redeemer, Acis, UBS, and HarbourVest  
16 and reached settlements that resolved the priority and  
17 amounts of those claims.

18 THE COURT: Right.

19 MR. SCHULTE: And then filed what's  
20 referred to -- and I'm sure Your Honor knows this --  
21 as a Rule 9019 motion to approve those settlements in  
22 the bankruptcy court.

23 THE COURT: Actually, I don't. I've never  
24 done bankruptcy but I read it. I know the general  
25 process and I did read it.

1 MR. SCHULTE: All right.

2 THE COURT: Just FYI, I've never done  
3 bankruptcy law. They've got their own rules.

4 MR. SCHULTE: Well, the parties in  
5 the bankruptcy had the opportunity to object to those  
6 settlements and some did so.

7 And after evidentiary hearings, the  
8 bankruptcy court granted those motions and allowed  
9 and approved those claims.

10 That is really important, Your Honor.

11 THE COURT: Okay.

12 MR. SCHULTE: That's Exhibits 14 through  
13 17 in the binder that I handed you.

14 And these are the same exhibits that are  
15 referenced in Hunter Mountain's petition. And it bears  
16 noting that the U.S. District Court affirmed those  
17 orders after appeals were taken.

18 But the bankruptcy court's approval of  
19 the very same claims that Hunter Mountain now seeks to  
20 investigate and invalidate is entitled to res judicata.

21 HMIT can't now second-guess the bankruptcy  
22 court's orders approving those very same claims. That's  
23 the effect of the investigation that Hunter Mountain  
24 seeks, the invalidation of claims that are already  
25 bankruptcy court approved.

1                   And it bears noting that each of those  
2 four orders, Exhibits 14 through 17, provides the  
3 following: quote, "The court" -- the bankruptcy  
4 court -- "shall retain exclusive jurisdiction to  
5 hear and determine all matters arising from the  
6 implementation of this order."

7                   This would include HMIT's stated goal  
8 of conducting discovery to try to invalidate these  
9 very claims.

10                   This is yet another reason, Your Honor, to  
11 answer your question earlier of why this request for  
12 discovery should be posed to the bankruptcy court.

13                   Judge Jernigan, I suspect, would have  
14 views on whether her own orders authorizing these claims  
15 should be overturned.

16                   Okay. So HMIT -- Hunter Mountain --  
17 alleges that after the bankruptcy court approved these  
18 claims, Seery disclosed inside information to Farallon  
19 and to Stonehill to encourage them to buy these claims  
20 from the original claimants. Again, UBS, Redeemer,  
21 Acis, and HarbourVest.

22                   Farallon, through Muck, which is its  
23 special purpose entity, and Stonehill through Jessup,  
24 which is Stonehill's special purpose entity, acquired  
25 those transferred claims in 2021.

1                   And there's no magic in bankruptcy court  
2 to claims transfers. It's a contractual matter between  
3 the transferors and the transferees. It's strictly  
4 between them.

5                   THE COURT: Okay.

6                   MR. SCHULTE: And there's no bankruptcy  
7 court approval that's even required.

8                   The transferee, so in this case Muck and  
9 Jessup, had simply to file under federal bankruptcy  
10 Rule 3001(e) a notice saying these claims were  
11 transferred to us. And they did so.

12                   Your Honor, that's Exhibit 6 through 11 in  
13 the binder that I handed to you.

14                   THE COURT: Okay.

15                   MR. SCHULTE: The filings evidencing those  
16 claims transfers were public. And Hunter Mountain  
17 received the claims transfer notices.

18                   And that's the exhibits that we were  
19 talking about, Exhibits 12 through 13, where Hunter  
20 Mountain's lawyers had appeared in the case before those  
21 claims transfer notices were filed.

22                   So not surprisingly, Hunter Mountain did  
23 not file any objections to those claims transfers. And  
24 that's not surprising because under Rule 3001, the only  
25 party that could object to the claims transfers were

1 the transferors themselves.

2 THE COURT: Right.

3 MR. SCHULTE: Essentially saying, hold on.  
4 We didn't transfer these claims. But of course there's  
5 no dispute that the transfers were made.

6 Here, HMIT was neither the transferor nor  
7 the transferee of the claims. It had no interest in  
8 these claims. It never did. It didn't before the  
9 claims transfers and it didn't after the claims  
10 transfers.

11 The claims originally belonged to  
12 Redeemer, Acis, UBS, and HarbourVest, and they were then  
13 transferred to Muck and Jessup, which are Farallon's and  
14 Stonehill's entities.

15 THE COURT: Right.

16 MR. SCHULTE: So why does that matter?  
17 That matters because these claims were approved by the  
18 bankruptcy court. The claims didn't change or become  
19 more valuable after they were transferred. The only  
20 difference is who is holding the claims.

21 So Hunter Mountain says, hold on. What  
22 we're alleging here is that the claims that Farallon and  
23 Stonehill purchased with the benefit of this purported  
24 inside information from Mr. Seery, they're secretly  
25 worth more than expected.

1                   Those allegations, they're disputed, to be  
2                   sure. But let's assume they're true. That situation  
3                   has zero impact on Hunter Mountain.

4                   THE COURT: Okay.

5                   MR. SCHULTE: And that's because this is a  
6                   matter that's strictly between the parties to the claims  
7                   transfers. Again, Redeemer, Acis, UBS, and HarbourVest  
8                   on the one hand and Farallon and Stonehill on the other.

9                   And the way we know this is let's  
10                  pretend that Muck and Jessup didn't buy these claims,  
11                  Your Honor, and that the claims instead have remained  
12                  with UBS, HarbourVest, Acis, and whatever the other  
13                  one I'm forgetting. The claims wouldn't have been  
14                  transferred, and they would have remained with those  
15                  entities.

16                  In that case, the original claimants would  
17                  have held those claims for longer than they wanted. And  
18                  if HMIT is right, then the claims would have ended up  
19                  being worth more than even they expected.

20                  So why does that matter? Well, that  
21                  matters because if that is all true, Hunter Mountain  
22                  would be in the exact same place today. Neither better  
23                  nor worse off, it would be in the exact same place.

24                  Either Farallon and Stonehill's entities  
25                  are gaining more on these claims than they expected

1 or UBS, HarbourVest, Acis, and Redeemer, they are  
2 realizing more on these claims than they expected.

3 But Hunter Mountain never stood to be paid  
4 on these claims to which it was a stranger. These are  
5 claims in which Hunter Mountain never had any interest.

6 THE COURT: So presuming that Hunter  
7 Mountain had expressed interest in buying these claims  
8 and there was insider trading, you don't think that  
9 would be a tortious interference in a potential  
10 contract?

11 MR. SCHULTE: If there was insider trading  
12 of the type that Hunter Mountain alleges in this case,  
13 it would have no impact on the rights of Hunter  
14 Mountain.

15 If that's true, maybe there was a fraud on  
16 the bankruptcy court. The bankruptcy court would surely  
17 be interested in that. Maybe there was a fraud on the  
18 transferors. I mean, maybe UBS, Redeemer, Acis -- why  
19 do I always forget the third one? -- and HarbourVest.

20 THE COURT: Like I said, I had a chart  
21 last night of all the names. Obviously, I haven't been  
22 involved in this case up until now, and there's a lot of  
23 names.

24 MR. SCHULTE: Yes.

25 The transferors of the claims might say,

1 well, wait a minute. I wish I would have known this  
2 inside information. I'm the one that was really injured  
3 here.

4 Because if there was really meat on this  
5 bone, Your Honor, then the injured parties would be  
6 the transferors of the claims: Redeemer, Acis, UBS,  
7 and HarbourVest.

8 Because the crux of HMIT's petition is  
9 that those entities, the transferors, were duped into  
10 selling their claims for too little when the claims were  
11 secretly worth more.

12 Well, if that's true, you would expect  
13 that the transferors would be screaming up and down  
14 the hallway, saying we didn't get paid enough.

15 THE COURT: Right.

16 MR. SCHULTE: We are the injured parties  
17 here, we are the ones with damages, we want to unwind  
18 these claims transfers, or we want to be paid more on  
19 these claims transfers.

20 But the rights of those entities,  
21 the transferors, to complain about these allegations  
22 doesn't mean that Hunter Mountain can also stand up and  
23 say, well, I want to complain too. Because Hunter  
24 Mountain never stood to be paid on these claims.

25 The question is if somebody was duped,

1 if somebody was injured, if anybody it was the  
2 transferors, not Hunter Mountain. The transferors would  
3 be the only real parties in interest that would have  
4 been injured by what Hunter Mountain alleges.

5 But it's notable that none of those  
6 transferors has filed an objection to these transfers.

7 THE COURT: Right.

8 MR. SCHULTE: None of them has filed a  
9 Rule 202 proceeding. None of them has filed a Rule 2004  
10 proceeding seeking discovery about inside information  
11 that Farallon and Stonehill allegedly had. It is  
12 Hunter Mountain who is an absolute stranger to  
13 these claims trading transactions.

14 And so HMIT is trying to inject itself  
15 into a transaction to which it was never a party and  
16 which it never had any interest.

17 The sellers were entitled to sell those  
18 claims to any buyer they wanted to on whatever terms  
19 they agreed to.

20 And if there was some information that  
21 they didn't have the benefit of that the buyers did,  
22 you would expect the transferors, if anyone at all,  
23 to be the ones complaining about it. But that's not  
24 what we have here.

25 THE COURT: Okay.

1 MR. SCHULTE: All right. Another note  
2 that Hunter Mountain glosses over is duty.

3 So all the claims that were listed on  
4 the PowerPoint all require that there must have been  
5 some kind of a duty owed by Farallon and Stonehill to  
6 Hunter Mountain. But there's no duty owed to a stranger  
7 to a claims trading transaction.

8 Yet again, if anybody were to have a  
9 duty owed to it, I guess it would be the transferors  
10 of the claims even though that was an arm's length  
11 transaction.

12 But it's not a stranger to the transaction  
13 and a stranger that has no interest in the claims that  
14 we're talking about here.

15 THE COURT: Okay.

16 MR. SCHULTE: Nor has Hunter Mountain  
17 identified any authority for a private cause of action  
18 belonging to Hunter Mountain related to these claims  
19 transfers.

20 Hunter Mountain doesn't have the right to  
21 assert claims on behalf of other parties. It only has  
22 the right to assert claims on behalf of itself when it  
23 has been personally aggrieved.

24 I heard Mr. McEntire say several times  
25 during his presentation that Hunter Mountain had a

1 99.5 percent equity interest in Highland Capital.

2 THE COURT: Right.

3 MR. SCHULTE: I think it's important to  
4 point out that that equity interest was completely  
5 extinguished by the confirmed plan in the bankruptcy  
6 case.

7 As Your Honor pointed out, we have the  
8 waterfall, and Classes 1 through 9 have to be paid in  
9 full. And you know what Classes 8 and 9 are? General  
10 unsecured claims and subordinated claims.

11 And the only way that Hunter Mountain  
12 is ever in the money, as Mr. McEntire was saying, with  
13 its Class 10 claim is if Seery, the claimant trustee,  
14 certifies that all claims in 1 through 9 are paid in  
15 full 100 percent with interest and all indemnity claims  
16 are satisfied.

17 There has been no such certification by  
18 Mr. Seery, and there may never be such a certification  
19 by Mr. Seery.

20 THE COURT: Okay.

21 MR. SCHULTE: So that is real important  
22 because the idea that Hunter Mountain stands to somehow  
23 gain from this transaction is flawed for the reasons  
24 we've already talked about.

25 But it's also flawed because they have

1 what is, at best, a contingent interest. It's  
2 contingent on things that have not yet occurred. And  
3 under the case law, they don't have standing conferred  
4 on them in that interest.

5 THE COURT: Okay.

6 MR. SCHULTE: So for all those reasons why  
7 there is no interest in the claims, no legal damages, no  
8 duty owed to it, no private cause of action belonging  
9 to it and a hypothetical and contingent interest, HMIT  
10 lacks standing to investigate or challenge these claims  
11 and claims transfers to which it was not a party and in  
12 which it had zero interest.

13 And for any or all of the reasons  
14 we've talked about, Your Honor, their petition should be  
15 dismissed. I welcome any questions the court may have.

16 THE COURT: No. My head is kind of  
17 spinning. Like I said, I spent all day yesterday  
18 reading stuff. As I said, I will admit I've never  
19 practiced bankruptcy law.

20 I mean, my joking statement is I pretty  
21 much know enough to not be in contempt of bankruptcy  
22 court. Because I have cases where one of the defendants  
23 or one of the parties ends up in bankruptcy court and  
24 whether or not I can proceed with my case, et cetera.  
25 That's my whole goal is not to be in contempt of court.

1 MR. SCHULTE: That should be the goal, is  
2 to not be in contempt of the bankruptcy court.

3 MR. McENTIRE: May I have just five or ten  
4 minutes?

5 THE COURT: I don't have another hearing,  
6 so we're fine on time.

7 MR. McENTIRE: All right. In all due  
8 deference to Mr. Schulte, the last 15 minutes of his  
9 argument misstates the law.

10 THE COURT: Okay.

11 MR. McENTIRE: The Washington Mutual case  
12 addresses almost 90 percent of what he just talked  
13 about. Their equity was entitled to bring an action  
14 to basically disallow an interest that was acquired by  
15 inside information.

16 Okay. And so he has not addressed the  
17 Washington Mutual case at all.

18 THE COURT: Well, okay. So my question  
19 is let's say that the insider trading didn't happen.

20 I mean, when I was playing with the  
21 numbers last night, it doesn't appear that Hunter  
22 Mountain, being Class 10, would have gotten anything  
23 anyways even if. Right?

24 Like I said, I did a lot of reading last  
25 night, so I want to make sure I understand.

1 MR. McENTIRE: Fair enough. I think I can  
2 address that.

3 The bottom line is a wrongdoer should  
4 not be entitled to profit from his wrong. That's  
5 the fundamental premise behind the restatement on  
6 restitution. That's the fundamental purpose of  
7 the Washington Mutual case.

8 You have remedies, including disgorgement,  
9 disallowance or subordination.

10 THE COURT: I'm just trying to be devil's  
11 advocate because I'm trying to work through this.

12 So let's say it did happen and the court  
13 ordered disgorgement and invalidated these transfers,  
14 then the money would just go to the Class 8 and  
15 Class 9. Right? To Acis, UBS, HarbourVest, etc.

16 MR. McENTIRE: No, they would not.  
17 Because those claims have already been traded.

18 THE COURT: Okay. Well, that's  
19 what I'm saying.

20 If the court said there was insider  
21 trading and to disallow the transfer and ordered  
22 disgorgement, theoretically, back to Highland Capital,  
23 then the money is there.

24 Okay. So then it would just go to Acis  
25 and UBS. Right?

1 MR. McENTIRE: The remedy here is to  
2 subordinate their claims. HarbourVest, UBS, Acis, and  
3 the Redeemer committee have sold their claims. They can  
4 intervene if they want and that's up to them. If they  
5 want to take the position that they were defrauded,  
6 that's up to them.

7 THE COURT: Okay.

8 MR. McENTIRE: Otherwise, the remedy is to  
9 disgorge the proceeds and put them back into the coffers  
10 of the bankruptcy court in which case Category 8 and 9  
11 would be brimful, overflowing, and flow directly into  
12 the coffers in Class 10.

13 And that's the purpose of 15 and 16 in  
14 Mr. Patrick's affidavit.

15 THE COURT: Okay.

16 MR. McENTIRE: I find it amazing that he  
17 refers to Judge Jernigan's orders where he said anything  
18 dealing with these claims must come back to me. I have  
19 exclusive jurisdiction. I recall that argument.

20 THE COURT: Right.

21 MR. McENTIRE: Well, she could have  
22 accepted the removal of Mr. Dondero in that other  
23 proceeding. She didn't. She said I don't have  
24 jurisdiction over this. I'm sending it back to  
25 the state court.

1 THE COURT: Okay. Because it was filed  
2 as a 202. If it had been filed as a Rule 404, then she  
3 would have had jurisdiction because you're specifically  
4 invoking a state court process. Right?

5 MR. McENTIRE: I'm invoking exclusively  
6 a state court process because of the benefit it  
7 provides. That is a strategic choice that this  
8 petitioner has elected. It has nothing to do with  
9 bankruptcy court, other than bankruptcy court is too  
10 slow.

11 All the invective about the prior contempt  
12 order has nothing to do with these proceedings.  
13 Mr. Dondero is not involved in these proceedings.

14 If HarbourVest and UBS want to intervene  
15 in some subsequent lawsuit, they have a right to do so.  
16 I can't stop them.

17 But until then, we have stated a cause  
18 of action or at least a potential cause of action which  
19 is insider trading. That from an outsider makes them an  
20 insider that owes fiduciary duties to the equity.

21 Washington Mutual allowed equity to come  
22 in and disallow those claims. And if those claims are  
23 disallowed, the Class 10 is going to be overflowing on  
24 the waterfall. And that's my client.

25 A couple of other things. Hunter Mountain

1 is not a stranger. Hunter Mountain was the big elephant  
2 in the room until the effective date of the plan.

3 We held 99.5 percent of the equity stake  
4 and when all of these wrongdoings occurred, Hunter  
5 Mountain was still the 99.5 percent equity stakeholder.

6 It's only after the bankruptcy plan had  
7 gone effective, after these claims had already been --

8 THE COURT: Wait. The insider trading  
9 happened after the bankruptcy had been filed but before  
10 the bankruptcy was resolved.

11 So it's during that process. Right?

12 MR. McENTIRE: You have filing a  
13 bankruptcy. You have a bankruptcy plan. You have  
14 confirmation of the plan, but it doesn't go effective  
15 until six months later.

16 THE COURT: Right.

17 MR. McENTIRE: After the bankruptcy  
18 plan was confirmed and they had dismal estimates of  
19 recovery -- 71 percent on Class 8, zero percent on  
20 Class 9 -- that's when Farallon and Stonehill purchased  
21 the claims.

22 But they purchased the claims at a time  
23 before the bankruptcy wasn't effective. And so the  
24 so-called claimant trust agreement had not gone into  
25 effect until several months later.

1 THE COURT: Okay.

2 MR. McENTIRE: And during this period of  
3 time Hunter Mountain was the very, very largest  
4 stakeholder.

5 THE COURT: Okay.

6 MR. McENTIRE: And so to call it a  
7 stranger is just not right and it's not fair because  
8 we're anything but a stranger.

9 They make an argument that Hunter Mountain  
10 didn't object to the settlements. Well, so what?  
11 I'm not attacking the underlying settlements.  
12 I'm attacking the claims transfers.

13 And then he says, well, why didn't they  
14 object to the claims transfers. Well, he finally  
15 conceded that the claims transfers are not actually  
16 subject to a judicial scrutiny by the bankruptcy court.

17 This court is uniquely qualified to  
18 review these claims transfers as is Judge Jernigan.  
19 Insider information is insider information as a rose  
20 is a rose is a rose. And any court of law is qualified  
21 to determine whether insider information was used.

22 Judge Jernigan did not say, okay,  
23 Farallon, you can buy this claim. There was no  
24 judicial process here.

25 THE COURT: Right. I mean, it's a motion.

1 We want to do this, just get approval.

2 MR. McENTIRE: They don't even have to get  
3 approval.

4 THE COURT: Okay.

5 MR. McENTIRE: All they have to do is file  
6 notice.

7 THE COURT: Okay. File the notice.

8 MR. McENTIRE: Judge Jernigan was not  
9 involved at all.

10 We had no reason to object. All we know  
11 there's a claims transfer. It's not until later that  
12 we discover that inside information was used and that's  
13 why we're here.

14 So we didn't object to the original  
15 claims. There was no need to. The original settlements  
16 rather. There was no need to. There was no objection  
17 to the claims transfers.

18 There was no mechanism to object, other  
19 than what we're doing here today. This is our  
20 objection. This is our attempt to object.

21 Because we believe that they have acquired  
22 hundreds of millions of dollars of ill-gotten gain and  
23 if that is true, not only will Hunter Mountain be  
24 benefited tremendously, but other unsecured creditors.  
25 They are very few but they will be also benefited.

1 Frankly, Judge Jernigan may want that to  
2 happen.

3 THE COURT: Okay.

4 MR. McENTIRE: But we're here to get the  
5 discovery so I can pull it all together within the next  
6 30 days or 40 days. So I can make decisions before  
7 somebody might suggest, hey, well, you should have  
8 filed this a little bit earlier.

9 And so, Judge, that's why we're here,  
10 in the interest of time. And that was my decision.  
11 That was my strategic decision to bring it here.

12 THE COURT: Right.

13 MR. McENTIRE: He says that Rule 3001 is  
14 the exclusive remedy. Only transferors can complain  
15 about transferees or vice versa.

16 THE COURT: You're not necessarily  
17 complaining about the actual transfer. It's how  
18 the transfer came about.

19 MR. McENTIRE: That's right.

20 And to suggest that that is the governing  
21 principle that this court should consider is an absolute  
22 contradiction to the Washington Mutual case.

23 Because if fraud is in play, if inside  
24 information is in play, then it impacts everyone who  
25 is a stakeholder. Everyone.

1 THE COURT: Okay.

2 MR. McENTIRE: And we are one of the  
3 largest stakeholders in the bankruptcy proceedings,  
4 even today. So that's all I have.

5 I thank you for your attention,  
6 Your Honor. Clearly, the benefit here is we get to  
7 uncover some things that need to be uncovered. And  
8 we'd like to do it so in a timely fashion.

9 And if we don't have a claim, we don't  
10 have a claim. If we have a claim, then we may file it  
11 in a state district court.

12 And if Judge Jernigan and her gate-keeping  
13 orders require us to go there, we'll go there. I'm not  
14 going to run afoul of any rule she has, but we need to  
15 get this underway.

16 THE COURT: Okay.

17 MR. SCHULTE: Your Honor, may I make some  
18 rifle-shot responses?

19 THE COURT: Yeah. That's fine.

20 MR. SCHULTE: Okay. Mr. McEntire has said  
21 that they are one of the largest stakeholders in the  
22 Highland bankruptcy based on this 99.5 percent equity.  
23 That equity was extinguished in the fifth amended plan.

24 That's Exhibit 3 that I handed you,  
25 Your Honor. That plan was filed in January of 2021

1 before any of these claims transfers took place.

2 The equity was extinguished by virtue of the plan.

3 THE COURT: Okay.

4 MR. SCHULTE: Mr. McEntire was talking  
5 about this Washington Mutual case. I read the case.

6 But what he said repeatedly, and I think  
7 it's really important to listen to what Mr. McEntire  
8 said about this case, is that that court allowed the  
9 equity to come in and talk about these transfers.

10 Hunter Mountain doesn't have any equity.  
11 That equity was extinguished in the plan for reasons  
12 I just discussed. So for being the largest stakeholder,  
13 according to Mr. McEntire, in the bankruptcy what does  
14 Hunter Mountain have to show for that? A Class 10.

15 As Your Honor pointed out, a Class 10  
16 interest, that is below everybody else. And that's  
17 where they've been relegated.

18 And to answer your question, Your Honor,  
19 that you posed to Mr. McEntire that I'm not sure was  
20 ever answered, HMIT -- Hunter Mountain -- at Class 10  
21 stood to gain nothing when the plan was put together.  
22 So the largest stakeholder stood to gain nothing.

23 I've pointed to the language in the  
24 court's order about how the court has exclusive  
25 jurisdiction.

1                   And Your Honor nailed the answer to the  
2 concern raised by Mr. McEntire, which is the bankruptcy  
3 court didn't have jurisdiction over a 202 proceeding.  
4 But it unquestionably has authority over the  
5 counterpart, 2004 in bankruptcy court.

6                   THE COURT: Right.

7                   MR. SCHULTE: Finally, I have never argued  
8 and if I did say this, I apologize. I have never argued  
9 that Hunter Mountain is somehow a stranger to the  
10 bankruptcy.

11                   THE COURT: Right. They were obviously  
12 involved in the bankruptcy, but they're a stranger to  
13 these transfers.

14                   MR. SCHULTE: Exactly. They were a  
15 stranger to these transactions. They didn't have any  
16 interest in these claims.

17                   They don't stand to gain anything if  
18 the claims are either rescinded or if the claims are  
19 invalidated or the transfers are invalidated. They  
20 don't stand to get anything because they never had  
21 any interest in these claims.

22                   The claims are the claims and either UBS,  
23 Redeemer, Acis, and HarbourVest stood to gain more than  
24 expected or Farallon and Stonehill stand to gain more  
25 than expected.

1                   And if anybody is really injured here,  
2 it's not Hunter Mountain. It's the transferors who  
3 were duped into these transfers, according to Hunter  
4 Mountain. And they would be the ones that would have  
5 damage and have a claim along the lines of what  
6 Hunter Mountain is trying to assert on behalf  
7 of all stakeholders.

8                   Your Honor, I have a proposed order, as  
9 Mr. McEntire does.

10                   May I bring it up?

11                   THE COURT: Yes, you may.

12                   Okay, Mr. McEntire. Anything else?

13                   MR. McENTIRE: His last few statements are  
14 inconsistent with the law, Your Honor.

15                   THE COURT: Okay.

16                   MR. McENTIRE: Because the law clearly,  
17 clearly indicates that we are a beneficiary. And  
18 that's what the Washington Mutual case stands for.

19                   THE COURT: Okay. Wait. Let me make sure  
20 I know which one.

21                   Do you have a cite for that case?

22                   MR. McENTIRE: Yes, ma'am. It's in the  
23 PowerPoint.

24                   THE COURT: That's fine. I just wanted  
25 to make sure I could find it.

1 MR. McENTIRE: There's also a Fifth  
2 Circuit case that talks about subordination where  
3 a Class 8 and Class 9 would actually be subordinated,  
4 Your Honor, to our claim.

5 So that's another approach to this, is  
6 subordination.

7 THE COURT: Okay.

8 MR. McENTIRE: And that's the In re Mobile  
9 Steel case out of the Fifth Circuit. I think there's a  
10 cite in our brief.

11 THE COURT: Okay.

12 MR. McENTIRE: I acknowledge that  
13 we're now classified with a different name. We're  
14 a B/C limited partner. And we're, in effect, a Class 10  
15 beneficial interest.

16 But we're there having been a 99.5. And  
17 the lion share of any money, 99.5 percent of any money  
18 that overflows into bucket No. 10 is ours.

19 THE COURT: Right.

20 Okay. I am processing. Obviously, I need  
21 to take this into consideration. I haven't had a chance  
22 to go through Respondent's exhibits.

23 I've looked through the plaintiff's  
24 exhibits, but now I have much more of a focus of what  
25 I'm doing.

1                   So I will try to get you all a ruling  
2 by the end of next week. I apologize. I've got a  
3 special setting next week that's going to be kind  
4 of crazy, but I will do everything I can.

5                   If you all haven't heard from me by next  
6 Friday afternoon, call my coordinator Texxa and tell  
7 her to bug me.

8                   MR. McENTIRE: Thank you for your time.

9                   THE COURT: You all are excused. Have  
10 a great day.

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Reporter's Certificate

1 STATE OF TEXAS )

2 COUNTY OF DALLAS )

3 I, Gina M. Udall, Official Court Reporter  
4 in and for the 191st District Court of Dallas County,  
5 State of Texas, do hereby certify that the above and  
6 foregoing contains a true and correct transcription of  
7 all portions of evidence and other proceedings requested  
8 in writing by counsel for the parties to be included in  
9 this volume of the Reporter's Record in the above-styled  
10 and numbered cause, all of which occurred in open court  
11 and were reported by me.

12 I further certify that this Reporter's Record  
13 of the proceedings truly and correctly reflects the  
14 exhibits, if any, offered by the respective parties.

15 I further certify that the total cost for the  
16 preparation of this Reporter's Record is \$750.00 and was  
17 paid by the attorney for Respondents.

18 WITNESS MY OFFICIAL HAND on this the 1st day of  
19 March 2023.

20

21

/S/ Gina M. Udall

22

Gina M. Udall, Texas CSR #6807  
Certificate Expires: 10-31-2024  
Official Reporter, 191st District  
Court of Dallas County, Texas  
George Allen Sr. Courts Building  
600 Commerce St., 7th Floor  
Dallas, Texas 75202  
Telephone: (214) 653-7146

23

24

25

GINA M. UDALL, CSR, RPR  
Official Reporter, 191st District Court

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# Exhibit 4-C

CAUSE NO. DC-23-01004

IN RE:	§	
	§	IN THE DISTRICT COURT
HUNTER MOUNTAIN INVESTMENT TRUST,	§	
	§	DALLAS COUNTY, TEXAS
Petitioner.	§	
	§	191ST JUDICIAL DISTRICT
	§	

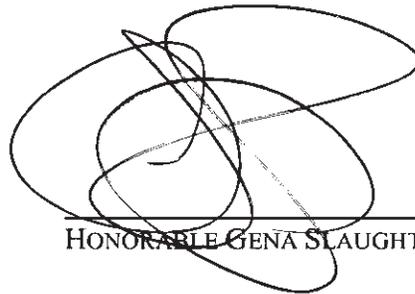
**ORDER**

Came on for consideration *Petitioner Hunter Mountain Investment Trust's Verified Rule 202 Petition* ("Petition") filed by petitioner Hunter Mountain Investment Trust ("HMIT"). The Court, having considered the Petition, the joint verified response in opposition filed by respondents Farallon Capital Management, L.L.C. ("Farallon") and Stonehill Capital Management LLC ("Stonehill"), HMIT's reply, the evidence admitted during the hearing conducted on February 22, 2023, the argument of counsel during that hearing, Farallon's and Stonehill's post-hearing brief, the record, and applicable authorities, concludes that HMIT's Petition should be denied and that this case should be dismissed. Therefore,

The Court ORDERS that HMIT's Petition be, and is hereby, DENIED, and that this case be, and is hereby, DISMISSED.

THE COURT SO ORDERS.

Signed this  day of March, 2023.



HONORABLE GENA SLAUGHTER

# Exhibit 4-D

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 09:24 AM 03/09/2021  
FILED 09:24 AM 03/09/2021  
SR 20210838989 - File Number 5421257

CERTIFICATE OF FORMATION

OF

Muck Holdings, LLC

FIRST: The name of the limited liability company is:

Muck Holdings, LLC

SECOND: Its registered office in the State of Delaware is to be located at 251 Little Falls Drive, in the City of Wilmington, Delaware, 19808, and its registered agent at such address is CORPORATION SERVICE COMPANY.

IN WITNESS WHEREOF, the undersigned, being the individual forming the Company, has executed, signed and acknowledged this Certificate of Formation this 9<sup>th</sup> day of March, 2021.

By: /s/ Hanchang Sohn  
Name: Hanchang Sohn  
Title: Authorized Person

# Exhibit 4-E

## CERTIFICATE OF FORMATION

OF

### Jessup Holdings LLC

- FIRST:** The name of the limited liability company is Jessup Holdings LLC.
- SECOND:** The address of its registered office in the State of Delaware is 1013 Centre Road, Suite 403-B in the City of Wilmington, Delaware 19805, in the County of New Castle. The name of its registered agent at such address is Vcorp Services, LLC.
- THIRD:** Members may be admitted in accordance with the terms of the Operating Agreement of the limited liability company.

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate of Formation on April 08, 2021.

/s/Taylor Lolya  
Taylor Lolya, Authorized Person

# Exhibit 4-F

**From:** Roger L. McCleary  
**To:** Schulte, David C (DAL - X59419)  
**Cc:** Sawnie A. McEntire  
**Subject:** HMIT — court's order/HMIT's request for information  
**Date:** Thursday, March 9, 2023 3:46:00 PM

---

David,

Thank you. This ruling denies Hunter Mountain Investment Trust (“HMIT”) the investigatory discovery sought from Farallon Capital Management, LLC (“Farallon”) and Stonehill Capital Management, LLC (“Stonehill”) under Tex. R. Civ. P. 202. Accordingly, HMIT requests that Farallon and Stonehill advise whether they will *voluntarily* provide some or all of the information and documents requested in HMIT’s Rule 202 Petition and, if so, under what terms. Please let us know by Tuesday, March 14<sup>th</sup>, whether Farallon and Stonehill will consider doing so. If so, we are available to discuss this at your earliest convenience.

In any event, HMIT also requests that Farallon and Stonehill *voluntarily* respond to the following two specific requests, which they can answer in a matter of minutes:

1. A simple description of the legal relationship: a) between Farallon and Muck Holdings, LLC (“Muck”), and b) between Stonehill and Jessup Holdings, LLC (“Jessup”).
2. Whether: a) Farallon is a co-investor in any fund in which Muck holds an interest related to the Claims at issue in the Rule 202 Petition; b) Stonehill is a co-investor in any fund which Jessup holds an interest related to the Claims at issue in the Rule 202 Petition.

We would also appreciate prompt written responses to these two specific requests. To the extent we do not receive written responses to these two requests by close of business on Tuesday, March 14<sup>th</sup>, this will be taken as Farallon and Stonehill’s refusal to provide the requested responses. Similarly, to the extent we do not receive a written confirmation of Farallon and Stonehill’s willingness to discuss voluntary production of more of the information and documents requested in HMIT’s Rule 202 Petition by then, this will be taken as their refusal to consider doing so.

Please let us know if you or your clients have any questions about this request. Thank you.

Regards, Roger.

Roger L. McCleary  
**Parsons McEntire McCleary PLLC**  
One Riverway, Suite 1800  
Houston, TX 77056  
Tel: (713) 960-7305  
Fax: (832) 742-7387  
[www.pmmlaw.com](http://www.pmmlaw.com)

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are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

---

**From:** Schulte, David C (DAL - X59419) <David.Schulte@hkllaw.com>  
**Sent:** Wednesday, March 8, 2023 9:08 PM  
**To:** Sawnie A. McEntire <smcentire@pmmlaw.com>; Roger L. McCleary <rmccleary@pmmlaw.com>  
**Cc:** Timothy J. Miller <tmiller@pmmlaw.com>  
**Subject:** [EXTERNAL] HMIT — court's order

Counsel--attached is a copy of the court's order in this case.

Dave

**David C. Schulte** | **Holland & Knight**  
Partner  
Holland & Knight LLP  
1722 Routh St., Suite 1500 | Dallas, TX 75201  
Cell 214-274-4141  
Phone 214-964-9419  
Fax 214-964-9501  
[david.schulte@hkllaw.com](mailto:david.schulte@hkllaw.com) | [www.hkllaw.com](http://www.hkllaw.com)

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

**In re:**

**HIGHLAND CAPITAL  
MANAGEMENT, L.P.**

**Debtor.**

§  
§  
§  
§  
§  
§

**Chapter 11**

**Case No. 19-34054-sgj11**

**ORDER GRANTING HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY  
MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING**

Upon consideration of the *Emergency Motion for Leave to File Adversary Proceeding* [Dkt. \_\_] (the “Motion”) filed by Hunter Mountain Investment Trust (“HMIT”), and having considered any responses thereto, the Court finds that: (1) the claims alleged in HMIT’s Proposed Adversary Complaint [Dkt. \_\_-1] against James P. Seery (“Seery”), Stonehill Capital Management, LLC, Farallon Capital Management, LLC, Muck Holdings, LLC, and Jessup Holdings, LLC (the “Claims”) are colorable; (2) any demand on any other persons or entities to

prosecute the Claims would be futile; (3) HMIT is an appropriate party to bring the Claims on behalf of the Reorganized Debtor and the Highland Claimant Trust; and (4) HMIT's Motion should be granted.

It is therefore **ORDERED THAT:**

1. The Motion is GRANTED.
2. HMIT is granted leave to file its Proposed Adversary Complaint [Dkt. \_\_-1] as an adversary proceeding in this Court.

**###END OF ORDER###**

Submitted by:

**Parsons McEntire McCleary PLLC**

/s/ Sawnie A. McEntire

Sawnie A. McEntire  
Texas State Bar No. 13590100  
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1700 Pacific Avenue, Suite 4400  
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Houston, Texas 77056  
Telephone: (713) 960-7315  
Facsimile: (713) 960-7347

*Counsel for Hunter Mountain Investment Trust*

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter**

**Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

**Volume 6**

**APPELLANT RECORD**

**STINSON LLP**  
Deborah Deitsch-Perez  
Michael P. Aigen  
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Dallas, Texas 75201  
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Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

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

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

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

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

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

**APPELLANTS' STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL – Page 1**

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

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

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

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

- 000001*
1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 4**

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

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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 5**

DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

Texas Bar No. 24036072

Michael P. Aigen

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP

§  
§  
§  
§

Case No. 19-34054

Debtor(s)

Jointly Administered

**Post-confirmation Report**

Chapter 11

Quarter Ending Date: 03/31/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:  Reorganized Debtor

Other Authorized Party or Entity: Highland Claimant Trust

Name of Authorized Party or Entity

/s/ Zachery Z. Annable

Signature of Responsible Party

04/21/2023

Date

Zachery Z. Annable, Hayward PLLC

Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106

Dallas TX 75231

Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

**Part 1: Summary of Post-confirmation Transfers**

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	\$22,152,786	\$318,823,814
b. Non-cash securities transferred	\$0	\$0
c. Other non-cash property transferred	\$0	\$0
d. Total transferred (a+b+c)	\$22,152,786	\$318,823,814

**Part 2: Preconfirmation Professional Fees and Expenses**

a.			Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor <i>Aggregate Total</i>					
<i>Itemized Breakdown by Firm</i>						
	Firm Name	Role				
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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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		Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative	
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor					
	<i>Aggregate Total</i>					
	<i>Itemized Breakdown by Firm</i>					
		Firm Name	Role			
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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)					

**Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	\$0	\$0	\$15,750	\$15,750	100%
b. Secured claims	\$5,843,261	\$0	\$5,274,477	\$5,274,477	100%
c. Priority claims	\$16,498	\$0	\$1,213,832	\$1,213,832	100%
d. General unsecured claims	\$205,144,544	\$15,004,364	\$270,205,592	\$397,485,568	68%
e. Equity interests	\$0	\$0	\$0		

**Part 4: Questionnaire**

- a. Is this a final report? Yes  No
- If yes, give date Final Decree was entered: \_\_\_\_\_
- If no, give date when the application for Final Decree is anticipated: \_\_\_\_\_
- b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes  No

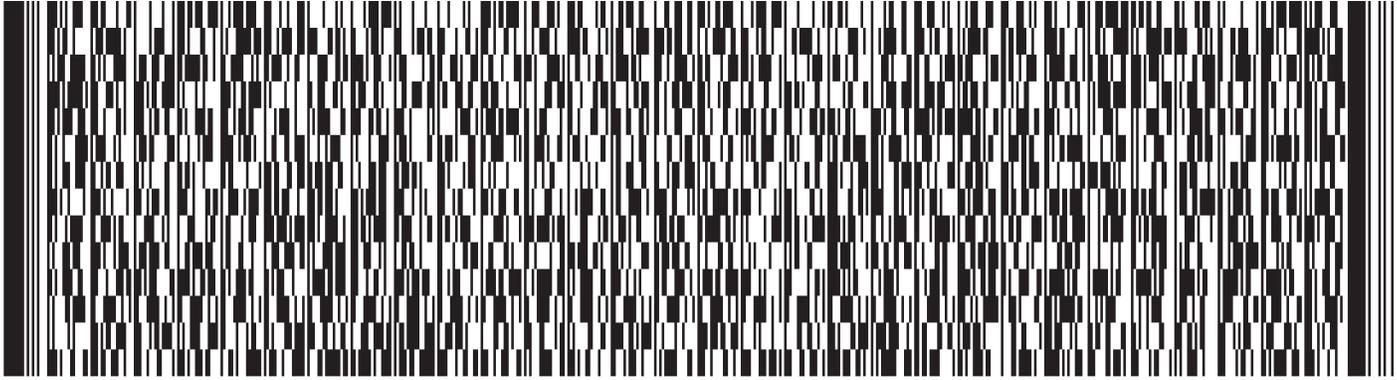
**Privacy Act Statement**

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." *See* 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: [http://www.justice.gov/ust/eo/rules\\_regulations/index.htm](http://www.justice.gov/ust/eo/rules_regulations/index.htm). Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

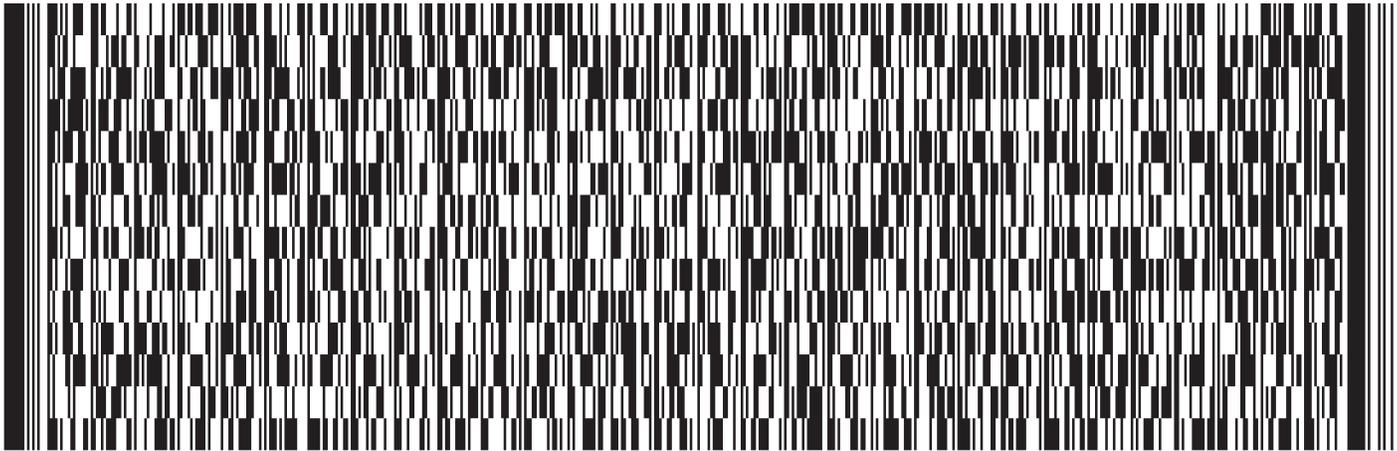
**I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.**

/s/ James Seery  
Signature of Responsible Party  
Claimant Trustee  
Title

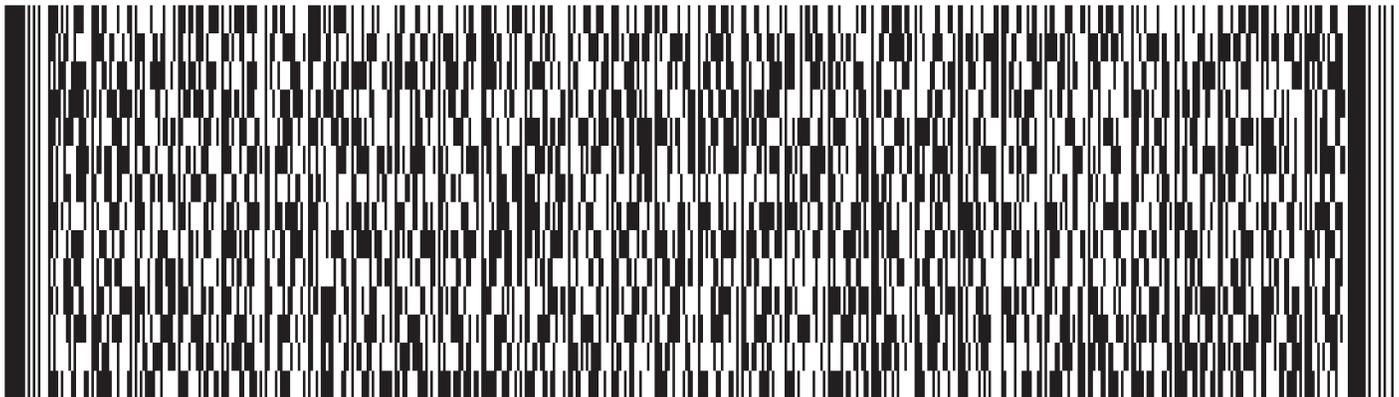
James Seery  
Printed Name of Responsible Party  
04/21/2023  
Date



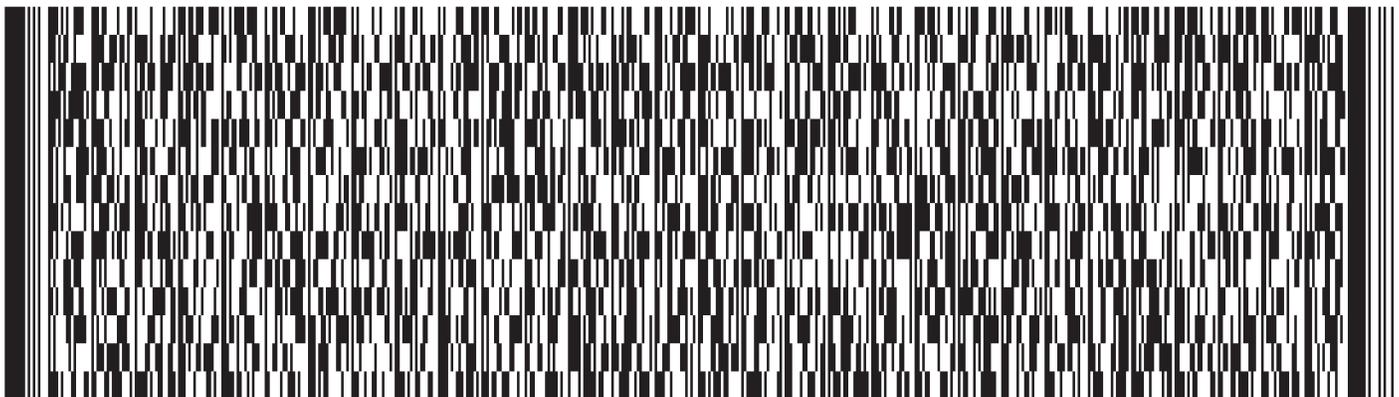
Page 1



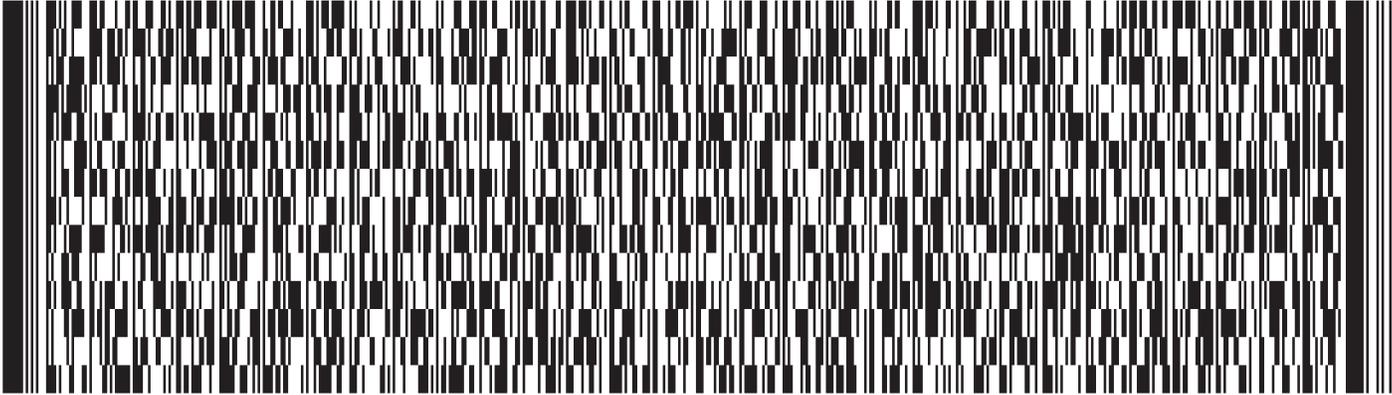
Other Page 1



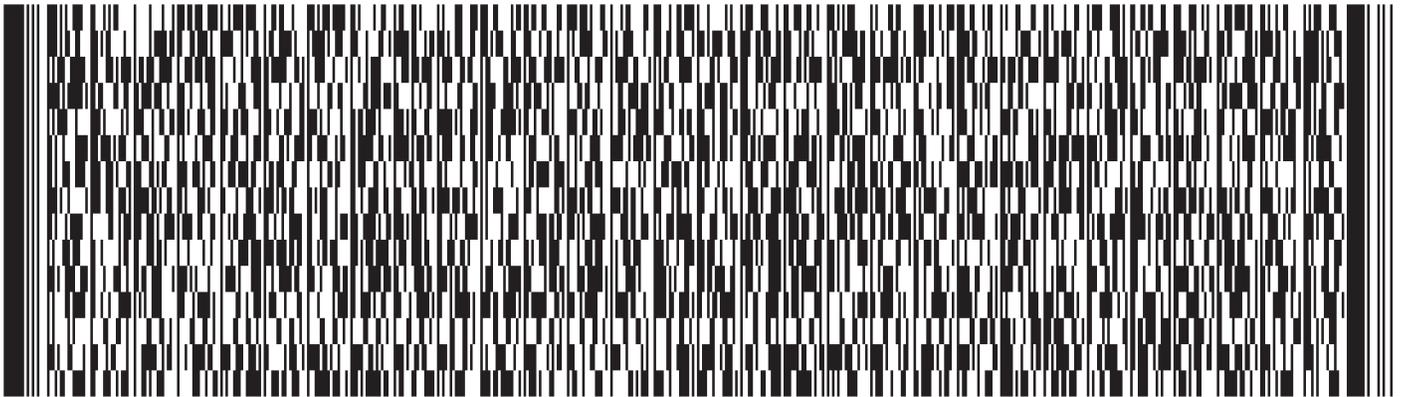
Page 2 Minus Tables



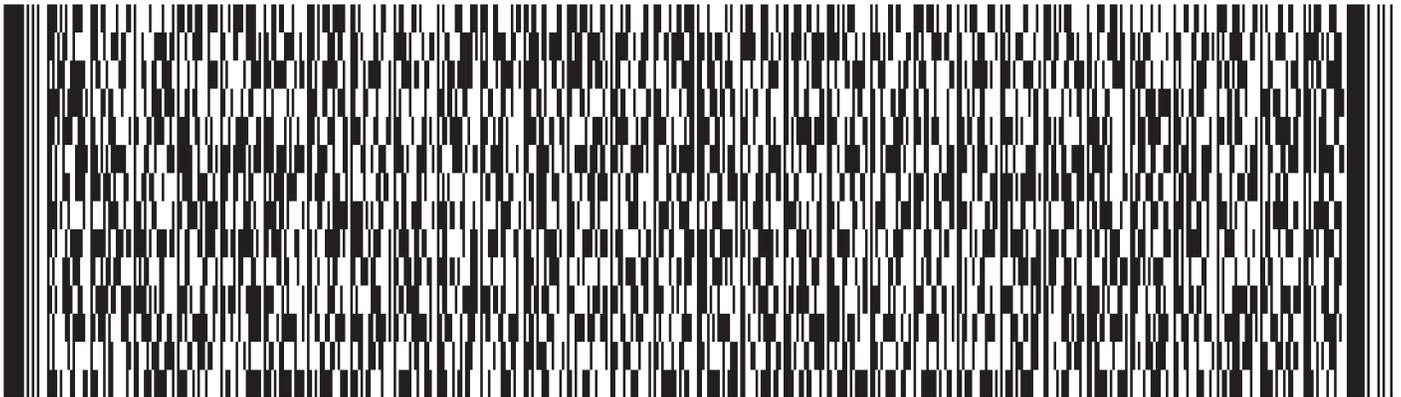
Bankruptcy Table 1-50



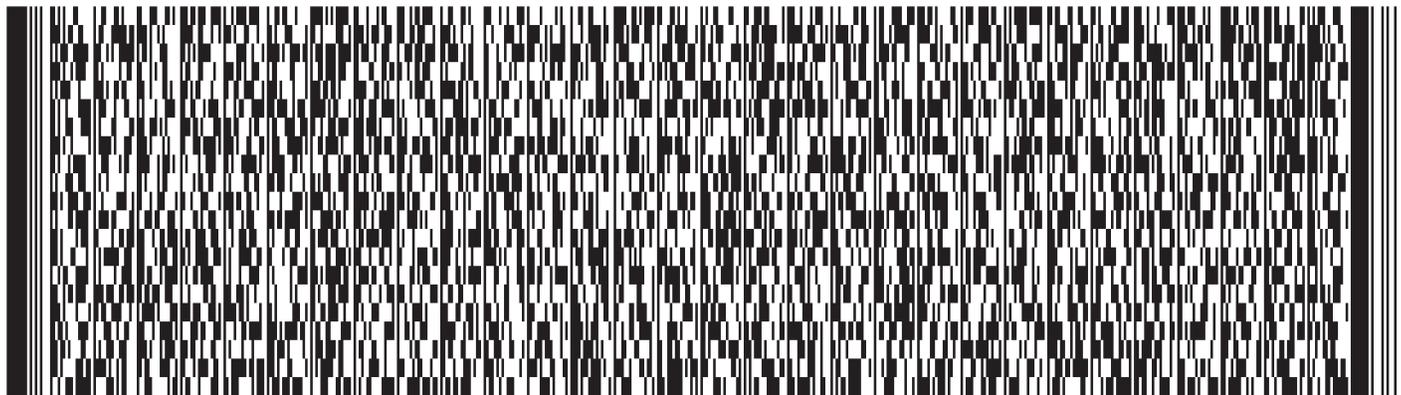
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

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In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Reorganized Debtor.	)	
	)	

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**GLOBAL NOTES TO POST CONFIRMATION REPORT**

The Highland Claimant Trust has filed the attached post-confirmation report (the “PCR”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the “Bankruptcy Case”). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor’s employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* <https://www.justice.gov/ust/chapter-11-operating-reports>). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

**Part 2: Preconfirmation Professional Fees and Expenses**

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

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

### **Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

**Addendum to Global Notes for March 31, 2023 Quarterly Operating Report  
 Summary of Highland Claimant Trust (“Claimant Trust”) & Highland Capital Management, L.P.  
 (“HCMLP”), Effectuation of Plan as of March 31, 2023**

**Item 1: Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary (in \$ millions)**

<b>Quarter End Date</b>	<b>Quarter End Cash and Equivalents balances [1][2]</b>	<b>Cumulative Funding – Disputed Claims Reserve</b>	<b>Cumulative Funding – Indemnity Trust [2]</b>
3/31/2021	\$27.9	n/a	n/a
6/30/2021	\$17.9	n/a	n/a
9/30/2021	\$33.6	n/a	\$2.5
12/31/2021	\$19.8	n/a	\$2.5
3/31/2022	\$21.1	n/a	\$2.5
6/30/2022	\$85.2	n/a	\$2.5
9/30/2022	\$31.8	\$11.0	\$20.0
12/31/2022	\$36.6	\$11.0	\$20.0
3/31/2023	\$25.0	\$11.6	\$32.0

[1] Bank cash for Claimant Trust, HCMLP (debtor up to August 11, 2021; re-organized from August 11, 2021), Highland Litigation Trust Sub-Trust (“Litigation Trust”), HCMLP GP LLC and including cash at brokerage account(s), cash equivalents as well as cash or equivalent reserves for earned operating obligations, if applicable. All amounts herein EXCLUDE the Highland Indemnity Trust (“Indemnity Trust”) and the cash held within the Disputed Claims Reserve, which are described separately, as well as any other segregated agency or shareholder representative account(s) for which cash is held solely for the benefit of others.

[2] Based upon the baseless filed motion seeking to litigate against indemnified parties and threats from vexatious parties, the Claimant Trustee expects to fund significant additional amounts into the Indemnity Trust.

**Item 2: Class 8 / Class 9 Summary (in \$ millions)**

Note that payments described within Part 3 of the quarterly operating report include payments to classes 6, 7, 8, and 9, whereas payments below only include payments to classes 8 and 9, as applicable.

<b>Class 8 / 9 Summary (in \$ millions)</b>			
	<b>Cash Payments through March 31, 2023</b>	<b>Disputed Claims Reserve</b>	<b>Remaining [3]</b>
Class 8	\$263.4	\$11.6	\$28.7
Class 9	\$0.0	\$0.0	\$98.8
<b>Classes 8 + 9</b>	<b>\$263.4</b>	<b>\$11.6</b>	<b>\$127.4</b>

[3] Face amount of allowed class 8/9 claims PLUS face amount of pending class 8/9 claims LESS cumulative payments to classes 8/9 LESS cumulative reserves for classes 8/9. Amounts EXCLUDE accrued interest on claim balances as well as amounts of pending admin priority claims, and unliquidated pending class 8/9 claims. Any future distributions to classes 8 and 9 are subject to satisfaction of Claimant Trust senior obligations.

**Item 3: Remaining disputed/expunged or pending claims (in \$ millions)**

Amounts reserved within the Disputed Claims Reserve are in no way indicative of the value or validity of the claim, but rather are simply established based on the face amount of the claim and the proportionate calculation of amounts already distributed to actual allowed claimholders.

Party	Claim number(s)	Face amount	Reserved in Disputed Claims Reserve	Unreserved
Highland CLO Management, Ltd.	Scheduled/Disputed	\$10.1	(\$9.2)	\$1.0
Patrick Daugherty [4]	205	\$2.7	(\$2.4)	\$0.3
CLO Holdco, Ltd. [5]	254	Unliquidated	\$0.0	See note
HCRE Partners, LLC [6]	146	Unliquidated	\$0.0	See note
Hunter Covitz [7]	186	Unliquidated	\$0.0	See note
Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP [8]	239	\$6.7	\$0.0	\$6.7
<b>Total</b>		<b>\$19.5</b>	<b>(\$11.6)</b>	<b>\$7.9</b>

[4] Proof of claim has been partially settled, with the exception of the Reserved Claim as described in the settlement agreement with Mr. Daugherty [Docket No. 3298]. Claimant may assert additional amounts may be owed.

[5] CLO Holdco, Ltd., initially filed proof of claim 133 and subsequently amended that claim to \$0.00 in open court and then by filing proof of claim 198. HCMLP relied on that agreement and amendment. Subsequently, CLO Holdco, Ltd., sought to amend claim 198 to an estimated amount of \$3.8 million by filing proof of claim 254. The Litigation Trust objected to the attempted amended claim, and CLO Holdco, Ltd.’s claim was adjudicated at \$0.00. CLO HoldCo, Ltd., has appealed.

[6] HCRE Partners, LLC filed a motion to withdraw proof of claim 146. HCMLP contested that the withdrawal of the claim. The matter is sub judice.

[7] Proof of claim 186 was expunged, but alleged transferee of expunged claim has appealed; appeal pending.

[8] Proof of claim 239, which is an administrative priority claim, was expunged and judgment was granted against alleged creditor, but alleged creditor has appealed.

**Item 4: Interest-bearing debt outstanding as of March 31, 2023 (in \$ millions)**

No interest-bearing debt outstanding. Exit Facility retired in 2022. [9]

[9] Encompasses Claimant Trust, HCMLP (re-organized), Litigation Trust, HCMLP GP LLC, but does not look-through to their respective subsidiaries and/or private funds or companies held by private funds.

**Item 5: Remaining investments, notes, and other assets [10]**

<b>Asset (alphabetic sorting, except “Other misc.”)</b>	<b>Description</b>
Breach of contract judgment	Direct asset. Bonded judgment against Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP, pending appeal.
Contempt civil penalty	Direct asset. Civil penalty owed by Mr. Dondero from the first of two contempt orders against him (his second contempt civil penalty was already received from subsidiary of DAF).
Contingent rights, post-sale	Residual contingent rights tied to milestones from a company that was sold Pre-Petition – direct and indirect interests through managed fund(s).
Highland CLO Funding, Ltd. (“HCLOF”)	Majority-owned by HCMLP or Claimant Trust (directly or indirectly) but controlled by two independent Guernsey-based directors – investments of this entity are predominantly subordinated notes of Acis-managed CLOs, whose remaining value is predominantly cash. Remaining distributions are held up due to litigation against Acis-related entities and HCLOF by Mr. Dondero’s entities.
NHT.U (TSXV exchange)	Direct asset. Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP.
NHT Holdco LLC	Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP. Indirect interests held through a Delaware LLC created for the sole purpose of holding shares of the hospitality REIT. Mr. Dondero is the manager of the entity. HCMLP has demanded shares as provided in the LLC agreement but has yet to receive delivery of the shares.
Note from Hunter Mountain Investment Trust	Direct asset. Defaulted note. Subject to Litigation Trustee collecting.
Note from The Dugaboy Investment Trust (“Dugaboy”)	Direct asset. Term note. Last receipt in December 2022. Next scheduled receipt in December 2023.
Notes from Mr. Dondero + his affiliates (except Dugaboy)	Direct asset. Demand notes and accelerated term notes, plus costs of collection. Subject to Claimant Trust collection litigation.
Post-sale escrows	Residual escrow(s) remaining related to the monetizations of two private companies. Direct and indirect interests through managed fund(s).
Private companies	Direct and indirect interests in two privately held companies.
Private equity fund interests	Direct or indirect interests in two private funds that make Oil & Gas and Healthcare-related investments, respectively.
SE Multifamily Holdings LLC	Direct asset. Membership interests. Subject to Claimant Trust litigation.
Other misc.	Future revenue streams; receivables; misc. investments; cash (unrestricted and reserved); litigation claims of the Litigation Trust; indemnification claims.

[10] Listing is not comprehensive, but rather is intended to capture potentially significant asset categories that have yet to be fully monetized. Listing includes assets of the Claimant Trust, HCMLP (re-organized), Litigation Trust, and HCMLP GP LLC. Descriptions herein indicate whether the asset is directly owned by one or more of these entities and/or whether the asset is indirectly beneficially owned.

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*Attorneys for Hunter Mountain Investment Trust*

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

**In re:** §  
§  
**HIGHLAND CAPITAL** § **Chapter 11**  
**MANAGEMENT, L.P.** §  
§ **Case No. 19-34054-sgj11**  
**Debtor.** §

**HUNTER MOUNTAIN INVESTMENT TRUST’S  
SUPPLEMENT TO EMERGENCY MOTION FOR LEAVE TO FILE  
VERIFIED ADVERSARY PROCEEDING**

Hunter Mountain Investment Trust (“HMIT”), Movant, files this Supplement to  
Emergency Motion for Leave to File Verified Adversary Proceeding (the “Supplement”),  
both in its individual capacity and on behalf of the Reorganized Debtor, Highland Capital  
Management, L.P. (“HCM” or “Reorganized Debtor”) and the Highland Claimant Trust

(“Claimant Trust”) (the Reorganized Debtor and Claimant Trust are collectively the “Highland Parties”) against Muck Holdings, LLC (“Muck”), Jessup Holdings LLC (“Jessup”), Farallon Capital Management, L.L.C. (“Farallon”), Stonehill Capital Management LLC (“Stonehill”), James P. Seery, Jr. (“Seery”) and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 11-10 are collectively “Respondents” or “Proposed Defendants”).<sup>1</sup>

### OVERVIEW

1. This Supplement is not intended to amend or supersede the Emergency Motion for Leave to File Verified Adversary Proceeding (Doc. 3699) (“Emergency Motion for Leave”); rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action.

2. Recent events make clear that (1) Seery, as Trustee, has a conflict of interest which precludes him from bringing the proposed claims; and (2) Seery, as Trustee, has abandoned and actively attempted to avoid a merits-based determination of the proposed claims. These facts are set forth in a revised Adversary Complaint attached to this Supplement as Exhibit 1-A.

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<sup>1</sup> All capitalized terms not otherwise defined herein have the meaning ascribed to them in HMIT’s Emergency Motion for Leave.

3. The revised Adversary Complaint also re-postures the Highland Parties as nominal defendants to address any procedural issues. Although the Court may authorize HMIT to bring the derivative action on behalf of the Highland Parties as Plaintiffs, their joinder as nominal defendants is also a recognized pleading practice. This recharacterization *does not change* the substance of the derivative action, which remains for the benefit of the Highland Parties.

4. Additional factual allegations are set forth in the revised Adversary Complaint. These additional allegations do not alter the substantive nature of the proposed causes of actions.

5. This Supplement is timely. The hearing will be scheduled no earlier than May 18, 2023. As such, the Respondents have at least 25 days from the filing of this Supplement before any scheduled hearing.

#### **RECENT EVENTS RELATED TO EMERGENCY MOTION FOR LEAVE**

6. On March 28, 2023, HMIT filed its Emergency Motion for Leave, seeking leave to represent the Highland Parties in a derivative capacity and seeking damages and other relief on behalf of itself, individually, as well as on behalf of the Reorganized Debtor and the Claimant Trust.

7. HMIT also filed its Application for Expedited Hearing on its Emergency Motion for Leave ("Application") seeking a hearing prior to April 16, 2022. In its Application, HMIT presented what it believed was good cause under Rule 9006 of the

Federal Rules of Bankruptcy Procedure to authorize a shortened time for a response and hearing.

8. On March 30, 2023, the so-called “Highland Parties,” which then also included Seery (Doc. 3707), and separately, Muck, Jessup, Farallon, and Stonehill (Doc. 3704), filed their Objections to the Application. One of the arguments advanced in these Objections by counsel for the “Highland Parties” was that the Court should delay a ruling on HMIT’s Application so Seery and other parties could develop a potential statute of limitations defense.

9. Regarding the proposed claims, Seery attempted to avoid the claims to protect his own self-interest *at the expense of* the Highland Parties and HMIT. Seery unilaterally characterized the Highland Parties as the “Highland Defendants” and claimed they were opposed to HMIT’s Emergency Motion for Leave. To be clear, HMIT seeks to assert its proposed claims *on behalf of* the Highland Parties, *not against* them.

10. Because recent events clearly establish HMIT’s capacity and standing to bring its derivative claims, a revised Adversary Complaint is attached hereto as **Exhibit 1-A**. In addition to new factual allegations, the revised Adversary Complaint also includes allegations regarding fraudulent concealment and the discovery rule because

these recent events make clear that the Proposed Defendants seek to fabricate a limitations argument which otherwise would not exist.

### ARGUMENTS & AUTHORITIES

11. Seery has known about HMIT's proposed claims for some time, yet, as Claimant Trustee with a duty to protect the Estate, Seery has made no attempt to prosecute these claims, is possessed of a debilitating conflict of interest and, in fact, has urged this Court to weaponize the gatekeeping protocol to make certain he and the other defendants can better take advantage of a purported statute of limitations defense. *See* Motion, n. 14. (Doc. 3707, ¶¶ 6, 17). Seery has opposed the Emergency Motion for Leave to advance his personal self-interest. Aware that "[t]he Plan does not release . . . Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence," Seery is clearly seeking other means by which to insulate himself.

12. Seery's recent conduct confirms he is disqualified to bring the Proposed Claims due to his manifest conflict of interest. His recent actions are to the detriment of the Highland Parties and HMIT, making it all the more necessary for the Court to grant HMIT leave to bring the proposed claims. *See Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 252-53 (5th Cir. 1988) (granting leave to creditors' committee to bring breach of fiduciary duty claim against bankruptcy estate's officers and directors for mismanagement of the bankruptcy estate due to debtor-in-possession's incapacity to do so due to apparent conflict of interest).

13. In *Louisiana World Expedition*, the Fifth Circuit explained: “In light of our analysis, we find that the debtor-in-possession’s refusal to pursue LWE’s cause of action against its officers and directors for negligent management was indeed unjustified. The Committee outlined a colorable claim which, if pursued successfully, could have greatly increased the value of the estate. While the debtor-in-possession’s refusal was understandable given the grave conflict of interest implications, we cannot ignore the fact that the creditors’ interests in seeing the property of the estate collected were not protected. Where the interests of an estate and its creditors are impaired by the refusal of a trustee or a debtor-in-possession to initiate adversary proceedings to recover property of the estate, we must consider that refusal unjustified.” *Id.* at 252.

### PRAYER

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court:

1. grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1-A, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P. and the Highland Claimant Trust, against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10 (and against Highland Capital Management, L.P. and the Highland Claimant Trust as nominal defendants to the extent necessary); and
2. further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: April 23, 2023

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/ Sawnie A. McEntire

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*Attorneys for Hunter Mountain  
Investment Trust*

**CERTIFICATE OF CONFERENCE**

On April 21, 2023, Hunter Mountain Investment Trust’s counsel conferred by telephone, via email, or both with counsel for all Respondents regarding the relief requested in this filing, including John A. Morris, who purports to be representing and acting on behalf of the Reorganized Debtor and the Highland Claimant Trust, Josh Levy and Lindsay Robin on behalf of James P. Seery, and David Schulte on behalf of Muck Holdings, LLC, Jessup Holdings LLC, Stonehill Capital Management LLC, and Farallon Capital Management, L.L.C. Mr. Morris indicated it can be assumed his clients are opposed until he reviews this filed instrument. Mr. Levy and Mr. Schulte indicated that their respective clients are neither opposed nor agreed until their counsel has reviewed the contents of this filing.

/s/ Sawnie A. McEntire  
Sawnie A. McEntire

**CERTIFICATE OF SERVICE**

I certify that on the 23rd day of April 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire  
Sawnie A. McEntire

**Exhibit 1-A to Emergency Motion**

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*Attorneys for Hunter Mountain Investment Trust*

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

	§	
<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	
	§	<b>Case No. 19-34054-sgj11</b>
<b>Debtor.</b>	§	
<hr/>		
<b>HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P., AND THE HIGHLAND CLAIMANT TRUST</b>	§ § § § § § § § §	<b>Adversary Proceeding No. _____</b>
<b>PLAINTIFFS,</b>	§	
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v. §  
§  
§  
MUCK HOLDINGS, LLC, JESSUP §  
HOLDINGS LLC, FARALLON §  
CAPITAL MANAGEMENT, L.L.C., §  
STONEHILL CAPITAL §  
MANAGEMENT LLC, JAMES P. §  
SEERY, JR., JOHN DOE §  
DEFENDANTS NOS. 1-10, §  
§  
DEFENDANTS §  
§  
and §  
§  
HIGHLAND CAPITAL §  
MANAGEMENT, L.P., AND THE §  
HIGHLAND CLAIMANT TRUST, §  
§  
NOMINAL DEFENDANTS. §

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**VERIFIED ADVERSARY COMPLAINT**

Hunter Mountain Investment Trust (“HMIT”) files this Verified Adversary Complaint (“Complaint”) in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. (“HCM” or “Reorganized Debtor”), and the Highland Claimant Trust (“Claimant Trust”) (the Claimant Trust and Reorganized Debtor are collectively referred to as “Nominal Defendants”), (collectively the Nominal Defendants and HMIT, in its various capacities, are referred to as “Plaintiffs”) complaining of Muck Holdings, LLC (“Muck”), Jessup Holdings LLC (“Jessup”), Farallon Capital Management, L.L.C. (“Farallon”), Stonehill

Capital Management LLC ("Stonehill"), James P. Seery, Jr., ("Seery"), and John Doe Defendants Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery, and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

## I. Introduction

### A. *Preliminary Statement*

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting and on behalf of the Reorganized Debtor and the Highland Claimant Trust, as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").<sup>1</sup> This action has become necessary because of the wrongful conduct of the Defendants, involving self-dealing, breaches of fiduciary duties, and aiding and abetting those breaches of duty.

2. This lawsuit focuses on a scheme involving Seery and his close business associates and allies. Seery held command of the Debtor, Highland Capital Management, L.P., in a complex bankruptcy. The Debtor's business involved hundreds of millions of dollars in assets that were held by the Debtor's Estate in a variety of entities, managed funds, and other investments. It was not and still is not a narrowly focused business with

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<sup>1</sup> Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT's Emergency Motion for Leave (Doc. 3699).

the type of uncomplicated, transparent assets that almost any potential claim purchaser could meaningfully evaluate. Seery effectively enjoyed despotic control over how these assets were managed, sold, or monetized, and many of his activities were never subject to judicial scrutiny or accountability. Indeed, Seery failed to cause the Debtor to make the financial disclosures required in such proceedings.

3. Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants (“Defendant Purchasers”), with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims. The Defendant Purchasers paid well over a hundred million dollars to buy these claims without the kind of independent due diligence that would be reasonably expected, if not required, because of their own fiduciary duties to their investors. It made no sense for the Defendant Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk. The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery’s secret assurances of great profits. Indeed, based upon publicly available information, their investment was projected to yield a small return with virtually no margin for error. But as they must have anticipated, they have already recovered the purchase price *and* returns far greater than what was publicly projected,

with the expectation of significant more profits if not deterred. These facts fit classic insider trading activity.

4. As part of the scheme, the Defendant Purchasers obtained a position to approve Seery's ongoing compensation - to Seery's benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT. Initially, Seery's compensation package was composed of a flat monthly pay. Now, however, it is also performance based. This allows the Defendant Purchasers to satisfy the *quid pro quo* at the heart of the scheme. Seery would help the Defendant Purchasers make large profits and they would help enrich Seery with big pay days.

5. To further advance their scheme, the Defendants have participated in the pursuit of contrived litigation against HMIT and others, through litigation sponsored by the Litigation Sub Trust. Upon information and belief, Seery also directed or authorized legal counsel for the Reorganized Debtor and Claimant Trust (who, tellingly, also represented Seery) to oppose HMIT's efforts to obtain leave to file this adversary proceeding. These obstructive tactics are self-serving, with the apparent goals of attempting to: (a) exhaust financial resources in an effort to delay recognition of the vesting of HMIT's interests under the terms of the CTA; (b) reduce the value of HMIT's interests under the CTA; and (c) deprive HMIT of claims relating to breaches of fiduciary duty stemming from the scheme. The Defendants and Litigation Sub Trust have used millions of dollars of assets to finance these obstructive tactics. Every dollar misapplied

by Defendants to further this scheme is damaging to HMIT, the Reorganized Debtor, and the Claimant Trust.

6. This derivative action is brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, L.P., the Original Debtor. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

7. This action also is brought subject to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (Doc. 1943, Exhibit A) (the "Plan") Article IX.F. Consistent with such provisions, this action is *not* brought *against* the nominal party Reorganized Debtor or the nominal party Claimant Trust, but as a derivative action on their behalf and for their benefit.<sup>2</sup> Additionally, HMIT is a person or party aggrieved by the conduct of the Defendants and, therefore, HMIT has constitutional standing to bring this action.

**B. *The Claimant Trust, the Derivative Action, the Futility of Further Demand, Abandonment of Claims, and Conflict of Interest***

8. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the "Debtor's Estate"), were transferred to the Highland Claimant Trust under the terms of the Plan, and as defined

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<sup>2</sup> To the extent the Reorganized Debtor and the Claimant Trust are considered necessary parties for the purposes of this derivative action, they have been included as nominal defendants.

in the CTA. These assets include all “causes of action” that the Debtor’s Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is also managed by the Claimant Trustee, Seery, who has self-servingly and falsely characterized the claims as allegedly meritless (Doc. 3707).

9. Seery, as Claimant Trustee, breached his fiduciary duties and abandoned the current claims in this Adversary Complaint by objecting to HMIT’s Emergency Motion for Leave to File this Adversary Complaint (Doc. 3699) and Application for Emergency Hearing (Doc. 3700). Seery is attempting to weaponize the gatekeeping protocols in the Plan to arm himself and others with potential defense arguments to avoid a merits-based determination of the claims against Seery and the other Defendants. In other words, Seery is attempting to protect his own self-interest *at the expense of* the Reorganized Debtor, the Claimant Trust, and HMIT. Therefore, any demand upon Seery to prosecute the claims in this Complaint would be futile because Seery is a Defendant.

10. Similarly, the Oversight Board exercises supervision over Seery as Claimant Trustee, and Muck and Jessup are controlling members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile because they also filed objections to the expedited prosecution of these or similar claims (falsely characterizing the claims as an alleged waste of judicial resources) (Doc. 3704). Upon

information and belief, Muck and Jessup are also controlled by Farallon and Stonehill, further evidencing the futility of any such demand on Muck and Jessup.

11. All conditions precedent to bringing this derivative action have otherwise been satisfied or waived, and the Defendants are estopped from asserting otherwise. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust.

**C. *Nature of the Action***

12. The insider trading scheme was implemented after confirmation of the Plan, but before the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Debtor and was the beneficiary of fiduciary duties owed by Seery.

13. Seery, the Original Debtor's Chief Executive Officer ("CEO") and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the insider trades by providing material non-public information to Defendant Purchasers concerning the value of assets in the Debtor's Estate. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information. Seery's dealings with the Defendant Purchasers were not arm's-length, but instead were covert, undisclosed, and collusive.

14. Motivated by corporate greed, the Defendant Purchasers aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical relationships with Seery, and their use of material non-public information, the Defendant Purchasers obtained effective control over various affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

15. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. As part of the scheme, Seery is attempting to delay recognition of HMIT's vesting of its interests under the CTA. As an allowed Class 10 Class B/C Limited Partnership Interest and Contingent Trust Interest holder, HMIT's right to recover from the Claimant Trust would be junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are those claims wrongfully acquired by the insider trading and the breaches of duty at issue in this proceeding.

16. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades at issue, Seery violated his fiduciary duties to the Debtor's Estate and to HMIT, including specifically his duty of loyalty and his duty to avoid self-dealing. But Seery was motivated out of self-interest to garner personal benefit by strategically "planting" his allies onto the Oversight Board which, as a consequence, does not act as an independent

board in the exercise of its responsibilities. Rather, imbued with powers to effectively control Seery's compensation, the Defendant Purchasers are postured to reward Seery for their illicit dealings and, upon information and belief, they have done so.

17. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders, and also aided and abetted Seery's breaches of fiduciary duties.

18. Because of their willful, inequitable misconduct and bad faith, Plaintiffs ask the Court to require the Defendant Purchasers to disgorge their ill-gotten profits and equitably disallow the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because the Defendant Purchasers received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge from Defendant Purchasers all such distributions above the Defendant Purchasers' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of other creditors and former equity pursuant to the waterfall established under the Plan and the CTA. Plaintiffs also ask the Court to require Seery to

disgorge all compensation from the date his collusive conduct first occurred. Alternatively, Plaintiffs seek damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

19. By this Complaint, Plaintiffs do not seek to challenge the Plan or the Order confirming the Plan.

## **II. Jurisdiction and Venue**

20. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the “Order of Reference”), this Complaint is commenced in the Bankruptcy Court because it is “related to a case under Title 11.” The filing of this Complaint is expressly subject to and without waiver of Plaintiffs’ rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs’ compliance with the Order of Reference, shall be deemed a waiver of this right. To the extent necessary, Plaintiffs seek to withdraw the reference at this time.

21. This Court has jurisdiction of the subject matter and the parties as a “related to” proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F., and XI. of the Plan.

22. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

23. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F., and XI. of the Plan.

### **III. Parties**

24. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but HMIT should be treated as a vested Claimant Trust Beneficiary due to Defendants' wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein. Due to Seery's abandonment of the claims asserted herein, and his patent conflict of interest, HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.

25. The Reorganized Debtor, Highland Capital Management, L.P., is a limited partnership formed under the laws of Delaware and may be served at its principal place of business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Reorganized Debtor is a nominal defendant only, and a primary beneficiary of this lawsuit.

26. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Debtor's Estate before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d). The

Claimant Trust may be served at its Principal Office where the Claimant Trust is maintained: 100 Crescent Court, Suite 1850, Dallas, Texas 75201. The Claimant Trust is a nominal defendant only, and a primary beneficiary of this lawsuit.

27. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor's bankruptcy.

28. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13<sup>th</sup> Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

29. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

30. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a

registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

31. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

32. HMIT separately seeks recovery against John Doe Defendants Nos. 1-10. Farallon has actively concealed the precise legal relationship between itself and Muck. Stonehill also actively concealed the precise legal relationship between itself and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities, on the eve of the insider trades to acquire ownership of the Claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities or individuals that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue. John Doe Defendants Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

## IV. Facts

### A. *Procedural Background*

33. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,<sup>3</sup> which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.<sup>4</sup>

34. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P., and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

35. Following the venue transfer to Texas on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the*

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<sup>3</sup> Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

<sup>4</sup> Doc. 1.

Ordinary Course (“Governance Motion”).<sup>5</sup> On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.<sup>6</sup>

36. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the “Board”) of Strand, the Original Debtor’s general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.<sup>7</sup> Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and as CEO of the Reorganized Debtor.<sup>8</sup>

**B. The Targeted Claims**

37. In his capacity as the Original Debtor’s CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the “Settling Parties”), resulting in the following allowed Claims:

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm
Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm

<sup>5</sup> Doc. 281.

<sup>6</sup> Doc. 339.

<sup>7</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>8</sup> See Doc. 1943, Order Approving Plan, p. 34.

UBS	\$65 mm	\$60 mm
<b>(Totals)</b>	\$270 mm	\$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 claims. Class 9 claims were subordinated to Class 8 claims in the distribution waterfall in the Plan.

38. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these “trades” took place within just a few weeks before the Plan’s Effective Date.<sup>9</sup> All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor’s bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

39. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, are acutely aware that they owe fiduciary duties to their investors. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of any publicly available information that could provide any economic justification for their investment decisions.

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<sup>9</sup> Docs. 2697, 2698.

40. Upon information and belief, Stonehill and Farallon collectively invested an estimated amount exceeding \$160 million to acquire the Claims with a face amount of \$365 million, but a far lower publicly projected value at the time, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's profit guarantees.

41. The Defendant Purchasers' investments become even more suspicious because the Debtor, through Seery, provided the *only* publicly available information which, at the time, included pessimistic projections that certain of the Claims would receive partial payment, while the subordinated class of Claims would receive no distribution:

- a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over \$200 million from \$566 million to \$364 million.<sup>10</sup>
- b. HCM's Disclosure Statement publicly projected payment of only 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.<sup>11</sup>
  - o This meant that the Defendant Purchasers invested more than an estimated \$160 million in the Claims when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par value on their Class 8 Claims. At best, the Defendant Purchasers would receive a marginal return that could not justify the risk.

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<sup>10</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>11</sup> Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

- c. Despite the stark decline in the value of the Debtor's Estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the "Claims") in April and August of 2021 in the combined estimated amount of at least \$163 million.<sup>12</sup>

42. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee's claim for \$78 million.<sup>13</sup> Upon information and belief, the \$23 million Acis claim<sup>14</sup> was sold to Farallon/Muck for \$8 million. Upon information and belief, HarbourVest sold its combined \$80 million in claims to Farallon/Muck for \$27 million. UBS sold its combined \$125 million in claims for \$50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, *the total projected payout was only \$35 million*. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor's Estate projected a zero dollar return on all such Claims.

43. Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment, Farallon, upon information and belief, indicated it would refuse to sell its stake in the Claims for a 40%

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<sup>12</sup> Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

<sup>13</sup> July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

<sup>14</sup> Seery/HCM have argued that \$10 million of the Acis claim is self-funding.

premium or more above its investment—claiming that its stake was far more valuable based upon Seery’s assurances. This is a striking admission that Farallon had and used material non-public inside information.

**C. *Material Non-Public Information is Disclosed to Seery’s Affiliates at Stonehill and Farallon***

44. One of many significant assets of the Debtor’s Estate was the Debtor’s direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. (“MGM”).<sup>15</sup>

45. On December 17, 2020, James Dondero sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple’s interest in acquiring MGM.<sup>16</sup> Of course, any such sale would significantly enhance the value of the Debtor’s Estate.

46. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in the Bankruptcy Court seeking approval of the Debtor’s settlement with HarbourVest - resulting in a transfer to the Debtor’s Estate of HarbourVest’s interest in a Debtor-advised fund, Highland CLO Funding, Ltd. (“HCLOF”), which held substantial MGM debt and equity.<sup>17</sup> Conspicuously, the HCLOF interest was not transferred to the Debtor’s Estate for distribution as part of the bankruptcy estate, but rather to “to an entity to be

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<sup>15</sup> See Doc. 2229, p. 6.

<sup>16</sup> See Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

<sup>17</sup> Doc. 1625. Approximately 19.1% of HCLOF’s assets were comprised of debt and equity in MGM.

designated by the Debtor” — *i.e.*, one that was not subject to typical bankruptcy reporting requirements.<sup>18</sup>

47. Upon information and belief, aware that the Debtor’s stake in MGM afforded a new profit center, Seery saw this and the value of other assets as an opportunity to increase his own compensation. He then enlisted the help of Stonehill and Farallon to extract further value from the Debtor’s Estate. This *quid pro quo* included, at a minimum, an understanding that Seery would be well-compensated for the scheme once the Defendant Purchasers, acting through Muck and Jessup, obtained control of the Oversight Board following the Effective Date.

48. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers<sup>19</sup> where, upon information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,<sup>20</sup> which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee<sup>21</sup> and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in

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<sup>18</sup> Doc. 1625.

<sup>19</sup> Seery Resume [Doc. 281-2].

<sup>20</sup> *Id.*

<sup>21</sup> Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

49. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any* significant profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.

50. Seery shared with Stonehill and Farallon material *non-public* information concerning certain assets of the Debtor's Estate. Otherwise, it makes no sense that the Defendant Purchasers would have made their multi-million-dollar investments under these circumstances.

51. Fed. R. Bank. P. 2015.3(a) requires "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or debtor . . . in which the estate holds a substantial of controlling interest." The purpose of Rule 2015.3 is "to assist parties in interest taking steps to ensure that the debtor's interest in any entity . . . is used for payment of allowed claims against the debtor." Pub. L. 109-8 § 419(b) (2005). However, these reports were not provided, thereby giving the Defendant Purchasers the added benefit of being insiders having access to information that was not made publicly available to other stakeholders.

52. When questioned at the confirmation hearing regarding the failure to file these reports, Seery explained that he “did not get it done and it fell through the cracks” (Doc. 1905 at 49:18-21). Yet even now — two years later — complete reports identifying the asset values and profitability of each non-publicly traded entity (in which the Reorganized Debtor has or held interests) have not been disclosed. Upon information and belief, this includes several entities including, but not limited to: Highland Select Equity Fund; Highland Select Entity Fund, L.P., Highland Restoration Capital Partners, L.P.; Highland CLO Funding, Ltd.; Highland Multi Strategy Credit Fund, L.P.; Highland Capital Management Korea Limited; Cornerstone Healthcare; Trussway Industries, LLC; Trussway Holdings, LLC; OmniMax International; Targa; CCS Medical; JHT Holdings; and other entities.<sup>22</sup> Upon information and belief, the Reorganized Debtors’ interest in some of these entities has been sold,<sup>23</sup> but the sales prices have not been fully disclosed (except as reported by certain purchasers in public SEC filings).

53. Rather than providing the required reports, only generic information was provided (by way of examples, as “private security,” “private portfolio company,” and “private equity fund”) with a total reported value of \$224,267,777.21.<sup>24</sup> Entities were sold

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<sup>22</sup> See Doc. 2229, pp. 6-7; January 29, 2021, Deposition of James P. Seery, Jr., 28:7-29:25.

<sup>23</sup> See, e.g., <https://trussway.com/2022/09/01/trussway-joins-builders-firstsource/> (sale of Trussway); <https://www.prnewswire.com/news-releases/scionhealth-completes-acquisition-of-cornerstone-healthcare-group-301728275.html> (sale of Cornerstone; unsurprisingly, Sidley Austin served as counsel for the purchaser); <https://www.prnewswire.com/news-releases/svpglobal-completes-acquisition-of-omnimax-international-301151365.html> (sale of OmniMax).

<sup>24</sup> Doc. 247 at p. 12.

without Court approval and without any 2015.3 report filings. In sum, upon information and belief, the Debtor had and the Reorganized Debtor has significant assets in a variety of funds and investments that were not publicly disclosed.

54. By wrongfully exploiting such material non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor’s Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

**D. Distributions**

55. The MGM sale was ultimately consummated in March 2022 for \$6.1 billion in cash, plus \$2.5 billion in debt that Amazon assumed and immediately repaid.<sup>25</sup>

56. HCM and its wholly owned subsidiary, HCMLP Investments, own 50.612% of HCLOF, which, as of December 31, 2021, had a total net asset value of \$76.1 million, a substantial amount of which has been monetized.<sup>26</sup> Upon information and belief, HCM’s interest in HCLOF was worth at least \$38 million.

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<sup>25</sup> Amazon Q1 2022 10-Q.

<sup>26</sup> Doc. 3584-1, pp. 2, 9, 13, 21.

57. On or about September 1, 2022, upon information and belief, Trussway was sold to Builder's First Source for \$274.8 million, net of cash.<sup>27</sup> Prior to the sale, upon information and belief, Highland Select Equity Fund, L.P. ("HSEF") owned "approximately 90%" of Trussway, and HCM owned 100% of HSEF.<sup>28</sup> Upon information and belief, HCM should have netted at least \$247.8 million from the sale of Trussway.

58. According to HCM's most recent Form ADV, filed on March 31, 2023, HCM currently owns at least \$127.5 million in Highland Multi Strategy Credit Fund, L.P., Highland Restoration Capital Partners Master, LP, Highland Restoration Capital Partners, L.P., and Stonebridge-Highland Healthcare Private Equity Fund (collectively, the "Private Funds"), in addition to interests in HCM's client-CLOs and other non-regulatory assets.

59. Accordingly, and upon information and belief, and based solely on the Reorganized Debtor's interests in Trussway, HCLOF, and the Private Funds, the Reorganized Debtor has over **\$413.3 million** in estimated liquid or monetizable assets—which alone exceeds the \$397.5 million in general unsecured claims, and indeed *all* allowed claims<sup>29</sup>—notwithstanding the value realized from the Reorganized Debtor's

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<sup>27</sup> BLDR Q3 2022 10-Q.

<sup>28</sup> Doc. 2229, n. 8.

<sup>29</sup> Doc. 3757, p. 7.

interests in MGM, Trussway, Cornerstone, and other substantial assets that may remain to be monetized.<sup>30</sup>

60. By the end of Q3 2021, just over \$6 million of the projected \$205 million available for general unsecured claimants had been disbursed.<sup>31</sup> No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—\$45 million more than was *ever* projected.<sup>32</sup> Thus, Stonehill (Jessup) and Farallon (Muck) already have received returns that far eclipse their estimated investments. They also stand to make further significant profits on their investments, including distributions on their Class 9 Claims.

61. As of March 31, 2023, the Claimant Trust has distributed \$270,205,592.<sup>33</sup> On a *pro rata* basis, this means that other creditors (excluding Muck and Jessup) have received an estimated \$24,332,361.07 in distributions against the stated value of their allowed claims.<sup>34</sup> That leaves an estimated unpaid balance of only \$2,456,596.93.

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<sup>30</sup> See Doc 3662, p. 4 (projecting assets worth at least \$663.72 million as of June 1, 2022); *see also supra*, n. 22-23.

<sup>31</sup> Doc. 3200.

<sup>32</sup> Doc. 3582.

<sup>33</sup> Doc. 3757, p. 7.

<sup>34</sup> Stonehill (Jessup) and Farallon (Muck)'s Claims collectively represent an estimated 91% of all Class 8 claims. The other creditors therefore represent an estimated 9%. Upon information and belief, Stonehill (Jessup) and Farallon (Muck) hold 100% of the Class 9 claims.

## V. Causes of Action

### A. *Count I (against Seery): Breach of Fiduciary Duties*

62. The allegations in paragraphs 1-61 above are incorporated herein as if set forth verbatim.

63. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty and the duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

64. By disclosing material non-public information to Stonehill and Farallon in an effort to gain personal financial benefit, Seery willfully and knowingly breached his fiduciary duties. By failing to disclose the inside trades at issue, including his role in those inside trades, Seery willfully and knowingly breached his fiduciary duties.

65. As a result of his willful misconduct, Seery was unfairly advantaged by receiving assurances of additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other stakeholders, including HMIT.

66. Seery's misconduct constituted fraud, willful misconduct, and bad faith.

67. Plaintiffs sue for all actual damages caused by Seery's misconduct. Seery should also be held liable for disgorgement of all compensation he received since his

collusion with the Defendant Purchasers first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

68. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

**B. *Count II (against all Defendant Purchasers and the John Doe Defendants):  
Knowing Participation in Breach of Fiduciary Duties***

69. The allegations in paragraphs 1-68 above are incorporated herein as if set forth verbatim.

70. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery willfully and knowingly breached this duty.

71. The Defendant Purchasers were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

72. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees.

73. The Defendant Purchasers' misconduct constitutes bad faith, fraud, and willful misconduct.

74. Plaintiffs sue for all actual damages caused by the Defendant Purchasers' wrongful conduct. The Defendant Purchasers are also liable for disgorgement of all profits Defendant Purchasers earned from their participation in the purchase of the Claims. Plaintiffs also seek damages against the Defendant Purchasers for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

**C. Count III (against all Defendants): Conspiracy**

75. The allegations in paragraphs 1-74 above are incorporated herein as if incorporated herein verbatim.

76. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, and to conceal their wrongful trades.

77. Seery's disclosure of material non-public information to the Defendant Purchasers and Seery's receipt of additional compensation as a *quid pro quo* for the insider-claims trading are overt acts in furtherance of the conspiracy.

78. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

79. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

80. Plaintiffs sue for all actual damages caused by the Defendants' wrongful conduct. All Defendants should be disgorged of their ill-gotten profits and gains.

81. Plaintiffs sue all Defendants for damages associated with Seery's compensation awards pursuant to the scheme.

**D. *Count IV (against Muck and Jessup): Equitable Disallowance***

82. The allegations in paragraphs 1-81 above are incorporated herein as if set forth verbatim.

83. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

84. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged.

85. Muck and Jessup's misconduct constitutes bad faith, fraud, and willful misconduct.

86. Given this willful, inequitable, and bad faith conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

87. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is

necessary and appropriate to remedy Muck's and Jessup's wrongful, willful, and bad faith conduct, and is also consistent with the purposes of the Bankruptcy Code.

E. *Count V (against all Defendants): Unjust Enrichment and Constructive Trust*

88. The allegations in paragraphs 1-87 above are incorporated herein as if set forth verbatim.

89. By acquiring the Claims using material non-public information, Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity.

90. All Defendants' misconduct constitutes bad faith, fraud, and willful misconduct.

91. Allowing Stonehill, Farallon, Muck, and Jessup to retain their ill-gotten benefits would be unconscionable.

92. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

93. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

94. Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or retribute all compensation he has received from the

outset of his collusive activities. Alternatively, he should be required to disgorge and retribute all compensation received since the Effective Date. A constructive trust should be imposed on all such funds to secure the restitution of these improperly obtained benefits.

**F. *Count VI (Against all Defendants): Declaratory Relief***

95. The allegations in paragraphs 1-94 above are incorporated herein as if set forth verbatim.

96. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

97. Bankruptcy Rule 7001 provides that “a proceeding to recover property or money,” may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

98. The CTA is governed under Delaware law. The CTA incorporates and is subject to Delaware trust law.

99. HMIT seeks a declaration, as follows:

- a. There is a ripe controversy concerning HMIT’s rights and entitlements under the Claimant Trust Agreement;
- b. HMIT has standing to bring an action even if its interest is considered contingent and because it is an aggrieved party and enjoys constitutional standing;
- c. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, has abandoned the claims;

- d. HMIT has capacity and standing to bring these claims derivatively because Seery, as Trustee, and Muck and Jessup have a conflict of interest;
- e. HMIT is an appropriate party to bring the derivative action on behalf of the Reorganized Debtor and the Claimant Trust;
- f. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested now;
- g. HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement by Muck and Jessup, and by extension, Farallon and Stonehill, of their ill-gotten profits;
- h. HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT's status as a Claimant Trust Beneficiary is fully vested when all of Muck's and Jessup's trust interests are subordinated to the trust interests held by HMIT;
- i. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery's conduct, bad faith, willful misconduct, and unclean hands;
- j. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and
- k. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

## **VI. Punitive Damages**

100. The allegations in paragraphs 1-99 above are incorporated herein as if set forth verbatim.

101. The Defendants' misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others. An award of punitive damages as allowed by law is appropriate and necessary under the facts of this case.

## **VII. Conditions Precedent**

102. All conditions precedent to recovery herein have been satisfied or have been waived.

## **VIII. Fraudulent Concealment and Equitable Tolling**

103. The allegations in paragraphs 1-102 above are incorporated herein as if set forth verbatim.

104. The illicit conduct of Defendants as described herein was concealed from Plaintiffs, who did not know, and could not reasonably discover, either that conduct of Defendants or the injury that would result. Specifically, as described herein, Defendants conspired to trade on material nonpublic information in breach of duties to the Original Debtors and Debtor's Estate. Defendants used deception to conceal the causes of action alleged herein and continue to refuse formal and informal discovery requests of facts, information, and documents related to the Plaintiffs' claims. HMIT reasonably relied on

Defendants' deceptive representations, and otherwise exercised all diligence in this matter, yet the causes of action were inherently undiscoverable.

105. Defendants continued to engage in the illicit practices described herein, and consequently, Plaintiffs were continually injured by Defendants' illicit conduct. Therefore, Plaintiffs submit that each instance that one or more of the Defendants engaged in the conduct complained of in this action constitutes part of a continuing violation and operates to toll the statutes of limitation applicable to all causes of action in this matter.

106. Defendants' conduct was and is, by its nature, self-concealing. In addition, Defendants, through a series of affirmative acts and omissions, suppressed the dissemination of truthful information regarding their illicit conduct, and have actively foreclosed Plaintiffs from learning of their illicit, unfair, self-dealing, disloyal, and/or deceptive acts.

107. To the extent that one or more of the Defendants asserts a defense of statute of limitations or other time-based defense, they are estopped from doing so and Plaintiffs affirmatively pleads fraudulent concealment should toll or otherwise prevent application of any alleged statute of limitation defense. Plaintiffs further affirmatively plead equitable estoppel.

108. By reason of the foregoing, Plaintiffs' claims on behalf of itself and on behalf of the Highland Parties are timely under any applicable statute of limitations, pursuant

to the discovery rule, pursuant to the equitable tolling doctrine, pursuant to fraudulent concealment, and/or pursuant to any other applicable tolling doctrine.

### **IX. Jury Demand**

109. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein involving triable issues of fact.

### **X. Prayer**

WHEREFORE, Plaintiffs pray for judgment against each of the Defendants as follows:

1. That all Defendants be cited to appear and answer herein;
2. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Seery, as trustee, has abandoned the claims and has a conflict of interest;
3. Finding that HMIT has capacity and standing to bring these claims individually and derivatively because Muck and Jessup have a conflict of interest;
4. Awarding equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);
5. Awarding disgorgement of all funds distributed from the Claimant Trust to the Defendant Purchasers and any John Doe Defendants over and above their original investments;
6. Awarding disgorgement of all compensation paid to Seery from the date of his first collusive activities, or alternatively, from the Effective Date;
7. Imposition of a constructive trust as to all ill-gotten profits received by the Defendant Purchasers and any John Doe Defendants;
8. Awarding declaratory relief as described herein;

9. Awarding actual damages as described herein;
10. Awarding exemplary damages as described herein;
11. Awarding pre-judgment and post-judgment interest at the highest rate allowed by law; and
12. Awarding all such other and further relief to which Plaintiffs may be justly entitled.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/\_\_\_\_\_

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	Case No. 19-34054 (SGJ)
Highland Capital Management, L.P. <sup>1</sup>	Chapter 11
Debtor.	(Jointly Administered)

**CLAIM PURCHASERS' OBJECTION TO HUNTER MOUNTAIN INVESTMENT  
TRUST'S (I) EMERGENCY MOTION FOR LEAVE TO  
FILE VERIFIED ADVERSARY PROCEEDING; AND (II) SUPPLEMENT TO  
EMERGENCY MOTION FOR LEAVE  
TO FILE VERIFIED ADVERSARY PROCEEDING**

<sup>1</sup> The last four digits of Debtor's taxpayer identification number are (6725). The headquarters and service address for Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

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Muck Holdings, LLC (“Muck”), Jessup Holdings LLC (“Jessup”), Farallon Capital Management, L.L.C. (“Farallon”), and Stonehill Capital Management LLC (“Stonehill”, and collectively, with Muck, Jessup, and Farallon, the “Claim Purchasers”) file this *Objection to Hunter Mountain Investment Trust’s (i) Emergency Motion for Leave to File Verified Adversary Proceeding; and (ii) Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* (the “Objection”). In support, the Claim Purchasers respectfully state as follows:

### **PRELIMINARY STATEMENT**

1. Hunter Mountain Investment Trust’s (“HMIT”) *Emergency Motion for Leave to File Verified Adversary Proceeding* (“Motion to File Complaint”) is a continuation of James Dondero’s (“Dondero”) relentless barrage of meritless litigation against the bankruptcy estate of Highland Capital Management, L.P. (“HCMLP” or the “Debtor”). Brought almost two years after the alleged “wrongdoing,” the Motion to File Complaint seeks leave for HMIT, a Dondero affiliate, to file an adversary proceeding against the Claim Purchasers, James P. Seery, the post-effective date trustee of the Debtor’s estate (“Seery”), and others based upon *private bilateral claim sales* between the Claim Purchasers and third-party sellers (“Claims Sellers”). HMIT lacks standing to complain about transactions between the Claim Purchasers and Claims Sellers, and for that reason alone, the Motion to File Complaint should be denied.

2. In addition, the Claims Purchasers owed no duties to the bankruptcy estate or any equity holders of the bankruptcy estate (including Dondero or HMIT) at the time of the claims transfers. As this Court knows, the trading of claims is not a process that involves the Court or the bankruptcy estate, other than the perfunctory filing of notice under FED. R. BANKR. P. 3001(e)(2). The Claim Purchasers filed Rule 3001 notices (most more than two years ago) and not one objection, response, or statement was filed with in response to those notices.

3. Moreover, none of the third-party Claims Sellers (who are sophisticated parties represented by skilled bankruptcy and transactional counsel) has ever made any allegation that the claims transfers damaged them or were in any way not valid, appropriately informed, arms-length transactions. The record shows that the Claims Sellers were well familiar with the circumstances of the Highland bankruptcy, having litigated for many years with Highland and Dondero themselves. The Claims Sellers sold their claims and have put their involvement behind them.

4. The structure of the bankruptcy estate shows that HMIT cannot better its position by pursuing the claims in the Proposed Complaint. Fundamentally, and fatally—whether HMIT could upend the transfers, or whether it could succeed in equitably subordinating the validly transferred claims—HMIT would be in the same position it is today: an equity holder with a speculative interest in the residual rump of the bankruptcy estate. With this Proposed Complaint, it is obvious that HMIT does not seek to bring justice to the Claims Sellers or even to the estate; it wants to bring nuisance against Seery and the Claim Purchasers. The law does not allow such actions, and the gatekeeper process should preclude HMIT from filing its Proposed Complaint.

5. Setting aside HMIT’s lack of standing and lack of cognizable claims, which should cause the Proposed Complaint to fail even under a motion to dismiss standard, the claims HMIT seeks to assert are not colorable and thus cannot pass through the Plan’s gatekeeper provision. The gravamen of the Proposed Complaint is that Seery provided the Claim Purchasers with “material non-public information” concerning Amazon’s potential acquisition of MGM Holdings, Inc. (“MGM”), prompting the Claim Purchasers to acquire certain claims asserted in the bankruptcy case. The claims are not securities, of course, and HMIT’s pleading fails to allege an information disparity between the transferors and Claims Purchasers. But why would Seery, an individual who *did* owe fiduciary duties to the bankruptcy estate, take such an unprecedented risk that would

imperil his role in the case and irreparably damage his reputation? HMIT alleges that Seery took such action to benefit himself by replacing the claims transferors with the Claim Purchasers, who allegedly agreed to “rubber stamp” Seery’s compensation requests post-effective date. In other words, HMIT dreamed-up a “*quid pro quo*” where “inside information” was exchanged for an agreement to excessively compensate Seery later. There is no plausibility to that outlandish claim.

6. HMIT must establish a “prima facie” case that its claims have foundation. This standard requires that HMIT do more than simply plead speculative “facts” and have the Court treat them as true. Rather, HMIT must show that its allegations are “plausible on their face”; otherwise, the Plan’s gatekeeper provision has no practical limitation on vexatious litigation. HMIT has not met this standard. Indeed, HMIT alleges no plausible facts supporting an inference that Seery shared non-public information with the Claim Purchasers, that the Claims Sellers were deceived in selling their claims, or that Seery and the Claim Purchasers agreed to a “*quid pro quo*.”

7. Allowing HMIT to proceed with litigation, after more than a year of harassing the Claim Purchasers in Texas state court (with no success), flies in the face of the central purpose of the Plan’s gatekeeper provision. The HCMLP bankruptcy estate, led by Seery, is engaged in substantive litigation against Dondero and his affiliated entities to recoup losses arising from various breaches and malfeasance allegedly committed by Dondero and his affiliated entities.<sup>2</sup> HMIT and Dondero are vexatious litigants who are desperately attempting to gain leverage in the litigation pending against them. They seek to send a message to the market that participation in the Highland liquidation case and in related adversary proceedings will come at great cost and with substantial downside to anyone who dares attempt to recoup losses caused by Dondero and his

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<sup>2</sup> See, e.g., *Highland capital Management, L.P. v. James Dondero, et al.*, Adv. No. 21-03003-SGJ (Bankr. N.D. Tex. Jan. 22, 2021).

entities and thereby profit from the vestiges of the HCMLP estate that Dondero no longer controls. This Court should deliver to HMIT and Dondero the stronger message that the gatekeeper terms were designed to control exactly this kind of baseless and damaging litigation.

### **BACKGROUND**

8. On October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court for the District of Delaware (the “Delaware Court”), instituting a voluntary chapter 11 bankruptcy case styled *In re Highland Capital Management, L.P.*, Case No. 19-12239 (Bankr. D. Del. Oct. 16, 2019) (the “Delaware Case”). On November 11, 2019, the Official Committee of Unsecured Creditors filed its *Motion of the Official Committee of Unsecured Creditors for an Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas* [Delaware Case at Dkt. No. 86] (the “Venue Motion”). On December 4, 2019, the Delaware Court granted the Venue Motion [Delaware Case at Dkt. No. 184], transferring the Debtor’s case to the Bankruptcy Court for the Northern District of Texas (the “Court”).

#### **A. Claims are Filed, Settled, Allowed, and Transferred at Arms-Length**

9. As set forth below, the claims transferred by the Claims Sellers were filed, settled, and ultimately allowed by this Court. Further, at every turn, Dondero and his affiliated entities objected to the settlements and were overruled. The Claim Purchasers acquired the claims through various arm’s-length transactions, after the respective claims were allowed by this Court, and in each case, Rule 3001 notices were filed as reflected below:

Claimant(s)	Date Filed/ Claim No.	Asserted Amount	Claim Settled/Allowed Amount	Rule 3001 Notice Filed
Acis Capital Management LP and Acis Capital Management, GP LLC (together, “Acis”)	12/31/2019  Claim No. 23	\$23,000,000	Yes [Dkt. No. 1302] <sup>3</sup>  \$23,000,000	Dkt. No. 2215 (Muck)
Redeemer Committee Highland Crusader Fund (the “Redeemer Committee”)	4/3/2020  Claim No. 72	\$190,824,557	Yes [Dkt. No. 1273]  \$137,696,610	Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (collectively, the “HarbourVest Parties”)	April 8, 2020  Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes [Dkt. No. 1788] <sup>4</sup>  \$80,000,000 in aggregate (\$45,000,000 General Unsecured Claim, and \$35,000,000 subordinated claim)	Dkt. No. 2263 (Muck)
UBS Securities LLC, UBS AG, London Branch (the “UBS Parties”)	June 26, 2020  Claim Nos. 190, 191	\$1,039,957,799.40	Yes [Dkt. No. 2389] <sup>5</sup>  \$125,000,000 in aggregate (\$65,000,000 General	Dkt. No. 2698 (Muck) and Dkt. No. 2697 (Jessup)

<sup>3</sup> The Debtor’s settlement with Acis was approved over the objection of James Dondero [Dkt. No. 1121].

<sup>4</sup> The Debtor’s settlement with the HarbourVest Parties was approved over the objections of James Dondero [Dkt. No. 1697] and The Dugaboy Investment Trust and Get Good Trust [Dkt. No. 1706].

<sup>5</sup> The Debtor’s settlement with the UBS Parties was approved over the objections of James Dondero [Dkt. No. 2295], and the Dugaboy Investment Trust and Get Good Trust [Dkt. Nos. 2268, 2293].

			Unsecured Claim and \$60,000,000 subordinated claim)	
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10. HMIT hypothesizes, without alleging any credible facts, that the Claim Purchasers acquired the claims based on “inside information” disclosed by Seery in return for an agreement to approve excessive compensation for Seery at some point in the future. Indeed, while HMIT bears the burden of satisfying the gatekeeper standard, the record shows that the Claims Sellers, who are the only possible victims under HMIT’s theories, have expressed no interest whatsoever in HMIT’s allegations. And only the Claims Sellers have standing to dispute a claim sale. *See, e.g.,* Aaron L. Hammer & Michael A. Brandess, *Claims Trading: The Wild West of Chapter 11s*, Am. Bankr. Inst. J. 62 (July/Aug. 2010) (“In 1991, Fed. R. Bankr. P. 3001(e) was amended to limit the court’s oversight on claims trading” such that “only the transferor may object to a transfer.”).

**B. Plan is Filed, Confirmed and Goes Effective**

11. On November 24, 2020, the Debtor filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1472] (the “Plan”). With respect to the claims held by the Claim Purchasers, the Plan provided, *inter alia*, that “[o]n or as soon as reasonably practicable after the Effective Date, each holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim” will receive interests in the Claimant Trust.<sup>6</sup> Plan at Art. III(H)(8). Further, the Plan provides

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with

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<sup>6</sup> The Plan includes substantially similar language with respect to Class 9 Subordinated Claims. Plan, Art. III(H)(9).

respect to any General Unsecured Claim, *except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.*

*Id.* (emphasis added).<sup>7</sup>

12. On February 22, 2021, the Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Dkt. No. 1943] (the “Confirmation Order”).

13. All of the claim trades were consummated *after* the Confirmation Order was entered.

14. On August 11, 2021, the Debtor filed its *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 2700], indicating that the Plan went effective on August 11, 2021.

**C. Dondero and HMIT Unsuccessfully Seek Discovery in State Court**

15. In July of 2021, Dondero filed a pre-suit discovery request, targeting Farallon and Alvarez & Marsal (“A&M”), under TEX. R. CIV. P. 202 (“Rule 202”): *In Re: James Dondero*, Cause No. DC-21-09534, in the 95th Judicial District Court of Dallas County, Texas (“First 202”). While the First 202 did not seek discovery from Seery directly, Farallon and A&M removed that case to this Court, as it was clear that the purpose of the First 202 was to impugn Seery’s conduct. After extensive briefing and a hearing, due to misalignment of Rule 202 proceedings and bankruptcy cases, the Court remanded the First 202 to the Texas state court “with grave misgivings.” The state court ultimately denied and dismissed the First 202 on June 1, 2022.

16. As the Court is aware, Dondero waited over six months and filed a new Rule 202 petition through his affiliate HMIT – raising the same issues related to claims trading as in the

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<sup>7</sup> The Plan includes substantially similar language with respect to Class 9 Subordinated Claims. Plan at Art. III(H)(8)-(9)

First 202, based on the same allegations of misconduct by Seery – but now in a different Texas state court: *In re: Hunter Mountain Investment Trust*, Cause No. DC-23-01004, in the 191st Judicial District of Dallas County, Texas (“Second 202”). The recipient of the Second 202 was once again Farallon, with the addition of Stonehill. HMIT, undeterred by the dismissal of the First 202, carefully avoided not only this Court, but also the 95th Judicial District Court that dismissed the First 202, and it sought to convince yet another state court judge that it had a valid basis to “investigate” claims purchases in a bankruptcy proceeding. After briefing and a hearing, the Second 202 met the same fate as the first: it was denied and dismissed on March 8, 2023.

17. Only after Dondero and HMIT failed to obtain state-court permission to harass the Claim Purchasers with broad discovery in support of futile theories did HMIT file its Motion to File Complaint, which is supported primarily with affidavits from Dondero, making the same baseless allegations that he and his lawyers have made for more than two years.

### **OBJECTION**

18. HMIT’s Motion to File Complaint [Dkt. No. 3699] should be denied because (i) HMIT lacks standing to pursue the claims asserted in the verified complaint attached as Exhibit 1-A to HMIT’s *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3760] (the “Proposed Complaint”), (ii) HMIT has no cognizable claims against the Claims Purchasers, (iii) the Claim Purchasers are protected by the “Gatekeeper Provision” of the Plan, and (iv) the claims alleged by HMIT are not colorable.

A. **HMIT has no standing to assert the causes of action in the Proposed Complaint.**

19. For a party to have standing to assert a cause of action, *inter alia*, the alleged injury must be fairly traceable to the defendant’s conduct. *See, e.g., Friends of the Earth, Inc. v. Crown Cent. Petroleum Corp.*, 95 F.3d 358, 360 (5th Cir. 1996) (“To demonstrate that [plaintiffs] have

standing, [plaintiffs] must show that: 1) its members have suffered an actual or threatened injury; 2) the injury is ‘fairly traceable’ to the defendant's actions; and 3) the injury will likely be redressed if it prevails in the lawsuit.”); *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 155 (Tex. 2012) (“The second element of the standing test requires that the plaintiff's alleged injury be ‘fairly traceable’ to the defendant's conduct.”); *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 38 (Del. Ch. 2012) (“there must be a causal connection between the injury and the conduct complained-of-the injury has to be fairly traceable to the challenged action of the [respondent]...”).

20. HMIT lacks standing to pursue the claims asserted in the Proposed Complaint because (i) neither HMIT nor the Bankruptcy Estate was affected or harmed by the Claim Purchasers’ acquisition of the claims; and (ii) the Proposed Complaint fails to allege a cause of action against the Claim Purchasers because it lacks a theory of cognizable damages to the Debtor’s bankruptcy estate, the Claimant Trust (as defined in the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1808] (the “Plan”)<sup>8</sup>), and/or the beneficiaries of the Claimant Trust, such that HMIT has been injured.

21. Under the Plan, HMIT held a Class 10 claim which was converted post-confirmation to a contingent trust interest in the Claimant Trust. HMIT admits that the requisite conditions have not been satisfied to convert its contingent trust interest into a beneficial interest, and that more than \$9.5 million must be paid to creditors other than the Claim Purchasers before HMIT becomes a Claimant Trust Beneficiary.<sup>9</sup> In an attempt to bridge this gap, HMIT asserts that it (or the bankruptcy estate) is entitled to the equitable disallowance, equitable subordination,

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<sup>8</sup> Capitalized terms used herein but not otherwise defined have the meanings ascribed in the Plan.

<sup>9</sup> See, e.g., Motion to File Complaint, ¶ 17 (stating that creditors other than the Claim Purchasers are owed at least \$9.627 million). This \$9.5 million does not include the tens of millions still owed to the Claim Purchasers.

disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims. Yet the transactions with which HMIT takes issue are private claim sales between the Claim Purchasers and various creditors of the Debtor's estate (the Claim Sellers). Neither HMIT nor the bankruptcy estate (including the Claimant Trust) has standing to challenge these sales.<sup>10</sup> Even assuming that the allegations in the Proposed Complaint are true (which is disputed), it is the Claim Sellers who potentially would have been damaged, not the bankruptcy estate. Whether the claims are held by the Claim Purchasers or the Claim Sellers, the economic effect on the bankruptcy estate (and thus on HMIT and its rights under the Plan) is the same.<sup>11</sup>

22. Perhaps realizing this deficiency in the Proposed Complaint, HMIT asserts that the Claim Purchasers and their proposed co-defendants are liable for excess compensation paid to Seery in furtherance of an alleged fraudulent scheme.<sup>12</sup> Yet HMIT has not pleaded facts sufficient to show that, even if Seery received extraordinary and excess compensation and such compensation was returned, HMIT's contingent interests in the Claimant Trust would vest. In fact, the Proposed Complaint is devoid of any factual assertions regarding the magnitude of the excess compensation Seery has received or will receive. HMIT admits that creditors, other than the Claim Purchasers, are owed more than \$9.627 million and remain ahead of HMIT in priority, which creditors must be paid before HMIT becomes a Claimant Trust Beneficiary.<sup>13</sup> Accordingly, even if everything in the Proposed Complaint were true (which is disputed), HMIT failed to plead facts showing that it has been damaged, and thus it lacks standing.

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<sup>10</sup> See Motion to File Complaint, ¶ 27.

<sup>11</sup> Notably, the Claim Sellers have not alleged that improper conduct occurred with respect to the relevant claim sales, despite having the greatest economic incentive to do so.

<sup>12</sup> See, e.g., Proposed Complaint, ¶¶ 4, 14, 16, 65, 69.

<sup>13</sup> See, e.g., Plan, Art. I.B.44; Motion to File Complaint, ¶ 17 (stating that creditors other than the Claim Purchasers are owed at least \$9.627 million).

23. Further, because HMIT’s alleged injury is not actual or imminent—but rather, is hypothetical and contingent, as it depends on HMIT becoming a Claimant Trust Beneficiary at some future date—it lacks standing to prosecute the causes of action it threatens (or such threatened claims are not ripe because they depend on contingent or hypothetical facts or events that have not yet occurred). *See, e.g., Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009) (“However, allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing.”); *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) (“For standing, a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical.”); *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 38 (Del. Ch. 2012) (stating that for a claimant to have standing, the alleged injury must be “concrete and particularized,” “actual or imminent,” and “not conjectural or hypothetical”). HMIT must identify “an existing—rather than future or speculative—right that may be presently asserted.” *Id.* Here, as any interest it has in the Claimant Trust is contingent, HMIT has no such right to assert. For this additional reason, HMIT’s Motion to File Complaint should be denied. *Id.*

24. In addition, the Plan specifically reserves *only* to the Debtor, the Reorganized Debtor, and the Claimant Trustee the right to seek equitable subordination:

**The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.**

Resp. Ex. 3 (Plan), Art. III.J. (emphasis added). There is no independent right under the Plan for creditors like HMIT to seek to equitably subordinate other creditors’ claims. HMIT lacks standing to assert the proposed claims because the Plan does not authorize these claims by such parties.

**B. Equitable disallowance and equitable subordination are not available to HMIT.**

25. As an initial matter, the Claim Purchasers no longer have claims which could be subordinated and/or disallowed. All of the relevant claims were settled and allowed prior to the Effective Date of the Plan.<sup>14</sup> Pursuant to the terms of the Plan, on the Effective Date of the Plan, such claims were exchanged for interests in the Claimant Trust, and thus there are no claims left which could be subordinated or disallowed. *See* Plan at Art. III(H)(8)-(9).

26. Further, the Plan provides that *only* the Debtor, the Reorganized Debtor and the Claimant Trustee reserved the right to seek to reclassify or subordinate claims. Plan, Art. III(J). However, any rights or defenses the Debtor's estate had with respect to the relevant claims were expressly disclaimed under the Plan, since all of the relevant claims were allowed by a final order of the Court, and thus no party has standing to seek to subordinate or disallow the Claim Purchasers' claims. *See, e.g.*, Plan at Art. III(H)(8)-(9) ("Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, ***except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.***") (emphasis added).

27. Even if the relevant claims still remain subject to challenge, the remedies sought by HMIT are either not available, or cannot benefit HMIT. HMIT primarily seeks the equitable disallowance of the Claim Purchasers' claims. Proposed Complaint, ¶¶ 82-87. However, the Fifth Circuit has recognized that "equitable considerations can justify only the subordination of claims, not their disallowance." *In re Mobile Steel Co.*, 563 F.2d 692, 699 (5th Cir. 1977). Further, the

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<sup>14</sup> *See* Dkt. Nos. 1273, 1302, 1788, 2389.

Supreme Court has indicated that the only grounds for disallowing a claim are those enumerated in section 502(b) of the Bankruptcy Code. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 444 (2007) (“But even where a party in interest objects, the court ‘shall allow’ the claim ‘except to the extent that’ the claim implicates any of the nine exceptions enumerated in § 502(b).”). Inequitable conduct, as alleged by HMIT, is not one of the enumerated grounds for disallowance under section 502(b). *See* 11 U.S.C. § 502(b).

28. The cases cited by HMIT in support of equitable disallowance, in addition to being out of circuit and counter to Fifth Circuit precedent, are inapposite. First, as the Southern District of New York has noted, “[w]hile courts ... have permitted claims for equitable disallowance to survive motions to dismiss, no court has ever employed equitable disallowance as a remedy or sanction under the Bankruptcy Code.” *In re LightSquared Inc.*, 504 B.R. 321, 338 (Bankr. S.D.N.Y. 2013). Notably, the statement from *Lightsquared* **specifically** cites to each of the cases that HMIT uses to advance its equitable disallowance argument. *Id.*

29. Further, in each of the cited cases, the claims for which equitable disallowance was sought belonged to estate fiduciaries. *See Pepper v. Litton*, 308 U.S. 295, 311 (1939) (analyzing the ability to disallow claims of a fiduciary); *In re Adelpia Commc’ns Corp.*, 365 B.R. 24, 71 (Bankr. S.D.N.Y. 2007) (same); *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011) (same). Here, the claims were filed and settled by non-fiduciaries, and were allowed while the claims were still held by non-fiduciaries. Further, the claims were acquired by the Claim Purchasers well before they became members of the Claimant Trust Oversight Committee, and thus before they were estate fiduciaries. *Id.* Thus, the considerations discussed in *Adelpia*, *Pepper*, and *Washington Mutual* do not apply under the circumstances.

30. In the alternative, HMIT seeks equitable subordination of the Claim Purchasers' claims. Proposed Complaint, ¶ 87 ("Pleading in the alternative only, subordination of Muck's and Jessup's [claims] to all other interests in the Claimant Trust ... is necessary and appropriate."). But the plain language of section 510(c) of the Bankruptcy Code precludes the relief sought by HMIT: "under principles of equitable subordination, [the court may] subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest." 11 U.S.C. § 510(c).

31. "Under the express language of 11 U.S.C. § 510(c), the Court may not subordinate a claim to an equity interest; it may only subordinate one claim to another claim and one equity interest to another equity interest." *In re Perry*, 425 B.R. 323, 380 (Bankr. S.D. Tex. 2010); *see also SED Holdings, LLC v. 3 Star Props., LLC*, 2019 WL 13192236, \*2 (S.D. Tex. Sept. 11, 2019) ("the claim may only be subordinated, but not disallowed."); *In re Winstar Commc'ns, Inc.*, 554 F.3d 382, 414 (3d Cir. 2009) ("Finally, Lucent contends that the Bankruptcy Court's equitable subordination holding was inconsistent with the Bankruptcy Code because § 510(c) does not permit the subordination of debt to equity. We agree.").

32. HMIT's claims are based upon its previous equity interests in the Debtor. *See, e.g.*, Motion to File Complaint, ¶ 8 ("HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest."). Because the claims held by the Claim Purchasers cannot be subordinated to HMIT's interests, equitable subordination would not benefit HMIT.

**C. HMIT has not established a legally cognizable claim.**

33. HMIT does not allege that it has any interest in the claims that were transferred to Muck and Jessup, yet HMIT still seeks to challenge such transfers based on conclusory allegations devoid of substance. Here, the Claim Sellers were creditors of the Debtor, and they were entitled

to sell their claims to Muck and Jessup (or to any other buyer) on whatever terms (including price) the parties agreed to. HMIT has no right to second-guess those terms.

**i. Claim Purchasers owed no duty owed to HMIT**

34. HMIT has not identified any legal duty that the Claim Purchasers owed to HMIT related to the claims transfers; nor has HMIT identified any authority for a private cause of action belonging to HMIT related to the claims transfers. The Claim Purchasers owed no duty (fiduciary or otherwise) to the bankruptcy estate, creditor, or equity holder at the time of the claim transfers. *See, e.g., In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 651 (Bankr. E.D. La. 1988) (finding that an acquirer of a claim had no fiduciary duty to third parties, and the claim’s effect on the bankruptcy estate before or after the claim’s acquisition was the same, and “[t]herefore, there are no grounds for this Court to invoke its equitable powers to disallow or limit the claim of [the claim acquirer] in this bankruptcy case.”); *In re Lorraine Castle Apartments Bldg. Corp.*, 149 F.2d 55, 57 (7th Cir. 1945) (finding that claim purchasers had no fiduciary duties to the estate or its beneficiaries).

35. This is not a mere academic point. HMIT must have sustained a legal injury as a result of a breach of a legal duty. *See, e.g., Nobles v. Marcus*, 533 S.W.2d 923, 927 (Tex. 1976) (“It is a fundamental rule of law that only the person whose primary legal right has been breached may seek redress for an injury. ... Without breach of a legal right belonging to the plaintiff no cause of action can accrue to his benefit.”). This is fatal to HMIT’s proposed claims.

**ii. Claim Purchasers are not “non-statutory” insiders**

36. HMIT tries to avoid the fact that no duty was owed to it by the Claim Purchasers by alleging that the Claim Purchasers were non-statutory insiders at the time of the claim transfers. Proposed Complaint, ¶¶ 14, 17. This Court has addressed similar arguments in another case. *See, e.g., In re Acis Capital Mgmt., L.P.*, 604 B.R. 484, 535 (N.D. Tex. 2019), *aff’d sub nom. Matter of Acis Capital Mgmt., L.P.*, 850 F. App’x 302 (5th Cir. 2021).

37. In deciding whether a person is a non-statutory insider, this Court has considered two factors: (i) the closeness of the relationship between the putative insider and the debtor; and (ii) whether the transactions between the putative insider and the debtor were conducted at arm's length. *In re Acis Capital Mgmt., L.P.*, 604 B.R. 484, 535. "Under this test, because prongs one and two are conjunctive, a court's conclusion that the relevant transaction was conducted at arm's length necessarily defeats a finding of non-statutory insider status, regardless of how close a person's relationship with the debtor is or whether he is otherwise comparable to a statutorily enumerated insider." *U.S. Bank Nat. Ass'n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 970 (2018) (concurrency). Here, HMIT fails to plead facts sufficient to show that the Claim Purchasers are non-statutory insiders.

38. One prong of the test requires a showing that the transactions between the putative insider **and the debtor** were not conducted at arm's length. *See, e.g., Acis Capital Mgmt.*, 604 B.R. at 535. Here, the complained-of transactions are between the Claim Purchasers and the Claim Sellers, not the Debtor. *See, e.g., Proposed Complaint*, ¶ 14 ("Because of their long-standing, historical relationships with Seery, **and their use of material non-public information**, the Defendant Purchasers obtained effective control over various affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became nonstatutory insiders.") (emphasis added); *id.*, ¶ 17 ("By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders, and also aided and abetted Seery's breaches of fiduciary duties."). HMIT's allegations miss the necessary element that the debtor be a party to the contested transaction.

39. On the other prong of the test, showing an unwholesome relationship between the third party and the debtor, the factual bases upon which HMIT asserts that Claim Purchasers are

non-statutory insiders of the Debtors are insufficient. Essentially, HMIT argues that because Seery and the Claim Purchasers had business dealings in the past, including Seery allegedly representing Farallon as its legal counsel, that the Claim Purchasers should be deemed non-statutory insiders. *See* Proposed Complaint, ¶ 48. But prior business dealings alone is insufficient to confer non-statutory insider status on a non-debtor third party. *See Stalnaker v. Gratton (In re Rosen Auto Leasing)*, 346 B.R. 798, 801 (8th Cir. BAP 2006) (finding that a social relationship turned business relationship between a debtor's chairman and a third party was insufficient for such third party to be deemed a non-statutory insider of the debtor). Neither is a prior attorney-client relationship. *In re Olmos Equip., Inc.*, 601 B.R. 412, 426 (Bankr. W.D. Tex. 2019) (finding that a prior attorney-client relationship was insufficient to deem a third party a non-statutory insider). Accordingly, HMIT fails to meet the first prong of the non-statutory insider test.

40. And, even assuming that the Claim Purchasers' acquisitions of the claims were the type of transaction that might confer non-statutory insider status on the Claim Purchasers, HMIT has not pleaded credible facts sufficient to show that the Claim Purchasers' acquisitions of the relevant claims were not at arm's-length. And, aside from conclusory implausible statements, the Proposed Complaint fails to set forth facts about any transactions between the Claim Purchasers, Seery, and/or the Debtor regarding Seery's compensation that can give rise to a reasonable inference that compensation decisions were not negotiated and agreed at arm's-length. HMIT's Proposed Complaint on its face fails to meet the second prong of the non-statutory insider test.

41. Simply put, there is no meritorious, legally cognizable claim related to the transferred claims for HMIT to pursue, and thus the Motion to File Complaint should be denied.

**D. The Alleged Claims Must be “Colorable” to Overcome the Gatekeeper Provision.**

42. The Claim Purchasers are protected by the “gatekeeper provision” in the Plan. Due to concerns about Dondero and his affiliates inundating the Debtor’s bankruptcy estate with vexatious litigation,<sup>15</sup> the Plan contains a provision which requires any entity seeking to assert a claim against a “Protected Party”<sup>16</sup> to first obtain leave of the Bankruptcy Court before filing an action. *See* Plan, Art. IX(f). Specifically, the Plan states as follows:

Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party . . . .

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<sup>15</sup> *See* Confirmation Order, ¶ 79 (“The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor’s insurance broker (‘AON’), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision.”)

<sup>16</sup> “Protected Party” is defined as “collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); provided, however, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term ‘Protected Party.’” Plan, Art. I(B)(104).

*Id.*

43. Here, as members of the Claimant Trust Oversight Committee (or Related Persons<sup>17</sup> of members of the Claimant Trust Oversight Committee), the Claim Purchasers are “Protected Parties.” Because the allegations in the Proposed Complaint hinge on the Claim Purchasers acting as members of the Claimant Trust Oversight Committee to overpay Seery, the Claim Purchasers are Protected Parties.<sup>18</sup> Accordingly, all of the causes of action that HMIT seeks to assert against the Claim Purchasers in the Proposed Complaint are gated by the gatekeeper provision.

**E. The Claims in the Proposed Complaint are not Plausible or Colorable.**

44. HMIT has argued that it must only satisfy the Rule 12(b)(6) pleading standard to establish that a colorable claim exists sufficient to overcome the gatekeeper provision. But if that were the case, HMIT’s allegations would be presumed true, and the gatekeeper provision would have no practical effect. Rather, the proper inquiry is found under the *Barton* doctrine.

45. In 1881, the Supreme Court established the *Barton* doctrine, which precluded suit being filed against court-appointed receivers absent the permission of the appointing court. *See Barton v. Barbour*, 104 U.S. 126, 127 (1881) (“It is a general rule that before suit is brought against a receiver leave of the court by which he was appointed must be obtained.”). The *Barton* doctrine has since been expanded to protect, *inter alia*, court-appointed bankruptcy trustees. *See In re Christensen*, 598 B.R. 658, 664 (Bankr. D. Utah 2019) (stating that the *Barton* doctrine “precludes suit against a bankruptcy trustee for claims based on alleged misconduct in the discharge of a

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<sup>17</sup> As defined in the Plan, “Related Persons” means “with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.” Plan, Art. I(B)(110).

<sup>18</sup> *See, e.g.*, Proposed Complaint, ¶¶ 4, 14, 16, 18, 47, 65.

trustee's official duties absent approval from the appointing bankruptcy court.”). Because HMIT seeks to file suit against Seery for alleged misconduct committed in furtherance of his official duties, and because these allegations are inextricably intertwined with the allegations against the Claim Purchasers, HMIT must satisfy *Barton* before its claims can move forward.

46. The *Barton* doctrine is strictly a “jurisdictional gatekeeping doctrine,” and it strips all courts—except the bankruptcy court that appointed the trustee—of subject-matter jurisdiction to hear a lawsuit against the trustee unless the bankruptcy court orders otherwise. *Id.* Under the *Barton* Doctrine, a court must determine if the party seeking to sue a trustee made “a prima facie case showing that [their claims are] not without foundation.” *Id.* Failure to establish a prima facie case results in denial of leave to sue. *Id.* Although similar to the standard for a motion to dismiss for failure to state a claim under FED. R. CIV. P. 12(b)(6), the “not without foundation” standard is more flexible, and the proposed plaintiff must allege facts sufficient to state a claim to relief that is “plausible on its face.” *Id.* The Proposed Complaint fails to state facially plausible claims.

**i. The Proposed Complaint fails to plead facts which lead to the inference that the Claim Purchasers engaged in *quid pro quo* with Seery.**

47. The Proposed Complaint asserts that the Claim Purchasers were “given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from [the Debtor’s assets].” Proposed Complaint, ¶ 54; *see also id.*, ¶¶ 4, 14, 16, 65, 71. The Proposed Complaint is devoid of any factual assertions as to how the Claim Purchasers have affected Seery’s compensation, and for this reason alone, the Proposed Complaint fails to assert a colorable cause against the Claim Purchasers for “knowing participation in Breach of Fiduciary Duties” (Count II) or “Conspiracy” (Count III), as each relies on the Claim Purchasers providing *quid pro quo* in exchange for allegedly receiving material non-public information. Proposed Complaint, ¶¶ 71, 77.

ii. **The Proposed Complaint fails to plead facts which lead to the inference that Seery provided the Claim Purchasers with material, non-public information.**

48. The allegations in the Proposed Complaint against the Claim Purchasers rely on the conclusory assertion that Seery provided the Claim Purchasers with material, non-public information that the Claim Purchasers used to their benefit in purchasing the claims. *See, e.g.*, Proposed Complaint, ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants, with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”). In support of that allegation, however, HMIT offers no factual support, and in fact admits that a logical leap is required to arrive at the conclusion that the Claim Purchasers were involved in nefarious activity:

It made no sense for the Defendant Purchasers to invest millions of dollars for assets that –per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk. ***The counter-intuitive nature of the purchases at issue compels the conclusion that the Defendant Purchasers acted on inside information and Seery’s secret assurance of great profits.***

*Id.* (emphasis added). Unsubstantiated claims of “counter-intuitive,” “secret,” unprofessional actions by the respected professional this Court appointed are not plausible. For this reason alone, the Proposed Complaint fails to assert a colorable claim. Yet the Proposed Complaint suffers from other deficiencies rendering the causes of action it seeks to assert non-colorable.

49. The Proposed Complaint admits that when the Claim Purchasers acquired the relevant claims, they would have turned a profit based upon then-existing projections. *See, e.g., id.*, ¶ 3 (arguing only that the purchased claims “did not offer sufficient potential profit” to justify their purchase); *id.* ¶ 43 (“Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . .”); *id.* ¶ 49 (“Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any significant* profit at the time of their multi-million-dollar investments

given the publicly available, negative financial information.”) (bold added). HMIT’s speculation about what level of projected return would be sufficient for the Claims Purchasers to purchase the claims does not give rise to a plausible inference that they acted improperly.

50. Second, contrary to the Proposed Complaint’s statement that it would have been “*impossible* for Stonehill and Farallon (in the absence of insider information) to forecast *any* significant profit at the time of their multi-million-dollar investments,” there was already media reporting that MGM was engaging with Apple and others on selling its media portfolio. *See, e.g.*, Benjamin Mullin, *MGM Holdings, Studio Behind ‘James Bond,’ Explores a Sale*, THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.), <https://www.wsj.com/articles/mgm-holdings-studio-behind-james-bond-explores-a-sale-11608588732>. Far from material non-public information, the fact that MGM was negotiating a potential transaction was publicly known. HMIT’s suggestion that the Claims Purchasers had information not known to the Claims Sellers is not plausible.

51. Finally, the Claim Purchasers acquired the UBS Claims approximately two and a half months *after* the announcement of the Amazon/MGM transaction, a fact which the Proposed Complaint neither discloses nor attempts to harmonize with its overall theory of the Claim Purchasers profiting from inside information. The Proposed Complaint’s lack of internal consistency, as well as its lack of consistency with verifiable public facts, renders it implausible.

52. Accordingly, the Proposed Complaint is devoid of necessary factual assertions, and what facts are pleaded do not take the causes of action in the Proposed Complaint from the realm of “conceivable” to being “plausible,” as required under relevant law.

For these reasons, the Claim Purchasers respectfully request that the Court deny the Motion to File Complaint, and grant the Claim Purchasers such other and further relief as is just and proper.

Dated: May 11, 2023

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#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, and served upon all parties receiving notice pursuant to the CM/ECF system on this the 11th day of May, 2023.

/s/ Christopher A. Bailey  
Christopher A. Bailey



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Highland Capital Management, L.P. (“HCMLP” or, as applicable, the “Debtor”), the reorganized debtor in the above-referenced bankruptcy case, the Highland Claimant Trust (the “Trust”; together with HCMLP, “Highland”), and James P. Seery, Jr., HCMLP’s Chief Executive Officer and the Claimant Trustee of the Trust (“Seery”; together with Highland, the “Highland Parties”), by and through their undersigned counsel, hereby file this opposition (the “Opposition”) to *Hunter Mountain Investment Trust’s* (“HMIT”) *Emergency Motion for Leave to File Verified Adversary Petition* (“Initial Motion” or “Mot.”; Docket No. 3699) and *Hunter Mountain Investment Trust’s Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* (“Supplemental Motion” or “Supp. Mot.”; Docket No. 3760; collectively, the “Motion”). In support of their Opposition, the Highland Parties state as follows:

#### **PRELIMINARY STATEMENT<sup>1</sup>**

1. This Motion is the latest attempt by James Dondero (“Dondero”) to make good on his threat to “burn down the place.” This iteration involves baseless and personal attacks against the Proposed Defendants,<sup>2</sup> harassing those individuals charged with maximizing value for creditors while (perversely) wasting Highland’s resources. Dondero’s demonstrated hostility to Highland’s legitimate goals is precisely why this Court entered the Gatekeeper Provision at issue here, and the current Motion vividly illustrates the wisdom of installing that prophylaxis. HMIT’s Motion should be denied.

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<sup>1</sup> Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

<sup>2</sup> “Proposed Defendants” refers to, collectively, Seery, Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”), Farallon Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”; collectively with Muck, Jessup, and Farallon, the “Claims Purchasers”), and John Doe Defendant Nos. 1–10.

2. HMIT’s proposed Complaint (“Compl.”; Docket No. 3760-1) is long on rhetoric, unsupported conspiracy theories, and conclusory statements, but short on actual factual allegations. For all its bluster, the Complaint rests entirely on the following assertions:

- On December 17, 2021, Dondero sent an unsolicited email to Seery regarding a potential acquisition of Metro-Goldwyn-Mayer Studios, Inc. (“MGM”). At the time, the Debtor owned MGM stock directly and managed an entity that owned, among numerous other assets, subordinated debt in other entities that owned MGM stock (Compl. ¶¶ 44–45);
- Seery purportedly communicated with principals at Farallon and Stonehill, entities with which Seery allegedly did “substantial business” more than a decade before he assumed his roles at Highland. (*Id.* ¶ 48.) The Complaint contains no allegations regarding *when* these communications supposedly occurred, but speculates that Seery provided “material non-public information” about MGM and vague “assurances of great profits” on Highland claims (*id.* ¶¶ 3, 13–14, 47, 50);
- In April 2021 (four months after Dondero’s unsolicited email), Farallon and Stonehill purchased “approved unsecured claims” of Highland at a 65% discount to face value. Based on the “publicly projected” estimates in Debtor’s November 30, 2020, Disclosure Statement—which the Complaint touts as the only public source of information regarding the claims’ potential value—Farallon and Stonehill stood to earn at least an 18% return on those purchases (*id.* ¶¶ 3, 37, 42); and
- In August 2021 (eight months after Dondero’s unsolicited email), Farallon and Stonehill became members of the Claimant Oversight Board (“COB”). Under the Court-approved Chapter 11 Plan, Seery earned a set base salary and a performance-based bonus. The Complaint speculates that negotiations over the latter component “were not arm’s-length,” but contains no allegations about the negotiation process or the terms of Seery’s final compensation package (*id.* ¶¶ 4, 13, 54).

The remainder of the Complaint consists of rhetorical rehash of these basic contentions, *ad hominem* attacks, or a self-serving (and utterly unsupported) claim by Dondero that a Farallon principal confessed this purported scheme to Dondero.

3. The Motion should be denied for three, independently sufficient reasons. *First*, as a threshold legal matter, HMIT, as a holder of unvested, contingent interests, lacks standing to bring derivative claims on behalf of the Trust or HCMLP under applicable state law and the

Claimant Trust Agreement (“Trust Agreement” or “Trust Agmt.”). HMIT cannot escape this reality by alternatively asserting its claims as nonexistent direct claims.

4. **Second**, HMIT’s claims are not “colorable” as that term is used in the Court-approved Plan and the Gatekeeper Provision included in this Court’s Confirmation Order. (Plan Art. IX.F; Confirmation Order ¶¶ 72, 76, 81.) As the Confirmation Order expressly stated, the Gatekeeper Provision requires Dondero to make a threshold showing consistent with the (i) “the Supreme Court’s ‘Barton Doctrine,’ *Barton v. Barbour*, 104 U.S. 126 (1881)),” and (ii) “the notion of a prefiling injunction to deter vexatious litigants, that has been approved by Fifth Circuit.” (*Id.* ¶¶ 76–81.) The Fifth Circuit confirmed as much when it rejected (in relevant part) Dondero’s confirmation appeal, holding that the Gatekeeper Provision “screen[s] and prevent[s] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan’s effectiveness.” *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 435 (5th Cir. 2022).

5. It is well-settled that “colorability” in this context requires HMIT to demonstrate **more** than the bare-bones Fed. R. Civ. P. 12(b)(6) “plausibility” standard. HMIT must demonstrate the “foundation” for its “*prima facie* case.” *In re VistaCare Grp., LLC*, 678 F.3d 218, 232 (3d Cir. 2012). Accordingly, and contrary to HMIT’s contention, evidentiary hearings are routinely conducted in this setting—particularly where (as here) the movant has larded its complaint with unsupported, conclusory assertions that cannot withstand even passing scrutiny and has attached hundreds of pages of exhibits and two self-serving declarations in support of its motion. HMIT’s proffered gatekeeping standard, by contrast, would impose no hurdle at all and would render the threshold entirely duplicative of the motion to dismiss standard that every litigant already faces. In addition to ignoring the stated purposes and intent of the Gatekeeper Provision (which are long

since beyond collateral attack) and the factual bases upon which it was adopted, HMIT offers no reason why litigants whose serial abuses earned the imposition of the Gatekeeper Provision should be subject to the same standard as everyone else. To state that absurd contention is to refute it, and would essentially nullify this Court's authority to police its own docket.

6. **Third**, even if the Rule 12(b)(6) standard applied, HMIT's bare-bones Complaint would fail. Even accepting the sparse factual allegations as true for purposes of this Motion, its central conclusions collapse under their own weight. For example, assuming that Dondero's unsolicited December 17, 2020 email, which violated this Court's TRO, included confidential information regarding MGM, the Complaint does not allege that such information remained nonpublic at the unidentified time Seery supposedly communicated with Farallon and Stonehill—and the Complaint acknowledges that neither entity purchased claims before April 2021. Likewise, although the Complaint's central thesis is that Farallon and Stonehill would not have purchased the Highland claims without knowing the supposedly secret MGM information, the Complaint acknowledges that the November 30, 2020 Disclosure Statement predicted a recovery **significantly above** what Farallon and Stonehill allegedly paid for the claims in April 2021.

7. While such self-contradictory and sparse allegations ordinarily might counsel in favor of denying the Motion under the Rule 12(b)(6) standard (*i.e.*, obviating the need to decide whether the *Barton/vexatious-litigant* standard applies), the Highland Parties respectfully request that this Court conduct the Rule 12(b)(6) analysis only in the alternative. Given the litigiousness of Dondero and his affiliated entities, who inevitably will appeal any adverse decision, the Fifth Circuit will benefit from a full record. Applying the correct heightened standard will also serve important interests going forward. This Motion is unlikely to be the last to require application of

the Gatekeeper Provision, and significant interests of judicial economy will be served by definitively establishing the threshold standard and propriety of an evidentiary hearing.

### RELEVANT FACTUAL BACKGROUND

#### A. The Gatekeeper Provision Was Adopted To Prevent Baseless Litigation.

8. HMIT was required to file the Motion in accordance with a provision in Highland's confirmed Plan known as the "gatekeeper" (the "Gatekeeper Provision"). (Morris Dec. Ex. 1 at 51–52.)<sup>3</sup> The Gatekeeper Provision states, in pertinent part, that:

[N]o Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . *without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim* of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

(*Id.* (emphasis added).)<sup>4</sup>

9. The Gatekeeper Provision is not a garden-variety plan provision. Rather, as this Court stated in its order confirming the Plan,<sup>5</sup> the Gatekeeper Provision was adopted as a direct result of Dondero's history of harassing, costly litigation. In describing the factual support for the Gatekeeper Provision, this Court observed that "prior to the commencement of the Debtor's

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<sup>3</sup> References to the "Plan" are to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*. (Morris Dec. Ex. 1.) Citations to "Morris Dec. Ex. \_\_\_" are to the exhibits attached to the *Declaration of John A. Morris In Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding* accompanying this Opposition.

<sup>4</sup> Under the Plan, HMIT is an "Enjoined Party," and HCMLP, the Trust, Seery (in various capacities), Farallon, and Stonehill (in their capacities as members of the COB approving Seery's compensation) are "Protected Parties." (Plan Arts. I.B.56, I.B.105.)

<sup>5</sup> (Morris Dec. Ex. 2 (the "Confirmation Order").)

bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation some of which had gone on for years and, in some cases, over a decade . . . . During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor.” (Confirmation Order ¶ 77.)

10. The Court further found that the “Dondero Post-Petition Litigation [as defined] was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would ‘burn down the place.’” (*Id.* ¶ 78.)

11. These findings of fact—all of which the Fifth Circuit left undisturbed while affirming, in relevant part, the Confirmation Order—were the foundation upon which the Gatekeeper Provision was adopted:

Approval of *the Gatekeeper Provision will prevent baseless litigation* designed merely to harass the post-confirmation entities charged with monetizing the Debtor’s assets for the benefit of its economic constituents, will *avoid abuse of the Court system and preempt the use of judicial time* that properly could be used to consider the meritorious claims of other litigants.

(*Id.* ¶ 79 (emphasis added).)

**B. Dondero, Patrick, And HMIT Unsuccessfully Search For Allegations To Manufacture A Complaint.**

12. HMIT’s proposed Complaint is premised on two primary allegations emanating from Dondero: (i) Seery supposedly shared with the Claims Purchasers “material, non-public inside information” that he had obtained from Dondero as part of a *quid pro quo* pursuant to which the Claims Purchasers would someday return the favor by joining the COB and “rubber-stamping” Seery’s compensation package, and (ii) a representative of Farallon essentially confessed to the arrangement in one or more phone calls with Dondero in the late Spring of 2021. Despite knowing

of these alleged “facts,” Dondero, Mark Patrick (“Patrick”),<sup>6</sup> HMIT’s purported manager, and HMIT did not bring any claims but instead sought discovery—which two different Texas state courts denied.

1. The First Rule 202 Petition

13. On July 22, 2021, Dondero filed a petition in Texas state court seeking pre-suit discovery against Farallon and Alvarez & Marsal pursuant to Tex. R. Civ. P. 202 (the “First Rule 202 Petition”). (Morris Dec. Ex. 3.) The First Rule 202 Petition was based, in part, on Dondero’s allegations that (i) Seery possessed “non-public, material information” that “[u]pon information and belief . . . was the basis for instructing Farallon to purchase the Claims,” and that (ii) he had a telephone call with Michael Linn (“Linn”), a representative of Farallon, in which Linn allegedly told Dondero that “Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery’s advice solely because of their prior dealings.” (*Id.* ¶¶ 21, 23.)<sup>7</sup>

14. After the targets of the First Rule 202 Petition removed it to the Bankruptcy Court, this Court held a hearing, after which it entered an Order remanding the proceeding back to Texas state court despite having “grave misgivings.” (Morris Dec. Ex. 6 at 20.) In doing so, the Court noted that it was “familiar with the concept of claims-trading in bankruptcy (including the fact that, for decades now, since a rule change in the last century, no court approval and order is necessary unless the transferor objects)” and that it appeared that Dondero’s motives were “highly suspect.” (*Id.* at 21.)

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<sup>6</sup> Patrick has worked closely with Dondero for over a decade. Patrick was hired by Highland in 2008 and now serves as manager of the “Charitable DAF,” which is controlled by Dondero. On August 3, 2021, this Court held Patrick “in civil contempt of court” after “basically abdicating responsibility” for “executing the litigation strategy” to Dondero. (Aug. 3, 2021 Order at 20–21, 30, Docket No. 2660.)

<sup>7</sup> As described in more detail below, Dondero later amended the First Rule 202 Petition (Morris Dec. Ex. 4) to, among other things, modify his description of his conversation with Linn and, several weeks after doing so, offered his third sworn version of his purported communication(s) with Farallon (*id.* Ex. 5).

15. After remand, the Texas state court slammed the gate closed, denying the First Rule 202 Petition (as amended) and dismissing Dondero’s case. (Morris Dec. Ex. 7.)

2. The Second Rule 202 Petition

16. Seven months later, in January 2023, HMIT filed another petition in a different Texas state court again seeking pre-suit discovery regarding, among other things, alleged wrongdoing in connection with the Claims Purchasers’ acquisition of claims in the Debtor’s bankruptcy case. (Morris Dec. Ex. 8 (the “Second Rule 202 Petition”).) While the Second Rule 202 Petition was embellished and contained a few more speculative and conclusory assertions, it was based on many of the same allegations contained in the First Rule 202 Petition. Indeed, Dondero submitted yet another sworn statement, this one in support of the Second Rule 202 Petition, which included the fourth version of his purported communication(s) with Farallon. (Morris Dec. Ex. 9.)

17. On March 8, 2023, the Texas state court again slammed the gate closed, denying the Second Rule 202 Petition and dismissing HMIT’s case. (Morris Dec. Ex. 10.)

18. Having been refused entry by two different Texas state courts, HMIT finally knocked on this Court’s door on March 28, 2023 by filing the Motion, on an emergency basis, and contending that its 18-month detour in the Texas state court system left it at risk of blowing the statute of limitations on certain claims. The Motion is largely based on the same threadbare facts and speculative and conclusory statements that were insufficient to obtain discovery in both the First Rule 202 Petition and the Second Rule 202 Petition.

**C. The Premise Of HMIT’s Proposed Complaint—An Alleged *Quid Pro Quo* Between Seery And The Claims Purchasers—Is Demonstrably False.**

19. HMIT asserts various legal theories resting on the assertion that Seery passed on material, non-public information concerning MGM to his purportedly “past business partners and close allies” Farallon and Stonehill, so that they could buy claims on the cheap and later reward

Seery by “rubber-stamp[ing]” an oversized compensation package. (Mot. ¶¶ 22, 24; *see also* Compl. ¶¶ 3–4, 16, 47, 54, 71, 77.)

20. HMIT primarily relies on: (i) an email Dondero sent to Seery on December 17, 2020, in which Dondero purportedly disclosed material, non-public inside information; (ii) Dondero’s prior sworn statements concerning, among other things, his supposed recollection of one or more telephone calls he had with one or more representatives of Farallon in the late Spring of 2021; and (iii) two letters summarizing “investigations” commissioned by Dondero, the results of which were apparently delivered to the Executive Office of the United States Trustee (“EOUST”). (Mot. ¶ 1 (“This Motion is separately supported by . . . the declarations of James Dondero, dated May 2022 (Ex. 2), James Dondero, dated February 2023 (Ex. 3), and Sawnie A. McEntire with attached evidence (Ex. 4).”))

21. Based on the facts set forth below, and as will further be demonstrated at the upcoming hearing, HMIT cannot meet its burden of establishing that there is a good faith basis for the allegations concerning the “*quid pro quo*.”

**D. The Allegations Concerning MGM and Insider Trading Have No Basis In Fact.**

22. As a member of MGM’s Board, Dondero was admittedly the source of the so-called material, non-public inside information. (Compl. ¶ 45.) On December 17, 2020, Dondero—in violation of an existing temporary restraining order—sent an email to Seery and others with the subject line “Trading Restriction re MGM – material non public information” stating:

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.

(Morris Dec. Ex. 11 (the “MGM E-Mail”).)<sup>8</sup>

1. Dondero Had An Axe To Grind When He Sent The MGM E-Mail.

23. By December 17, 2020, Dondero viewed Seery as his enemy. The MGM E-Mail was initially just another clumsy and improper attempt to impede the Debtor’s asset sales (*see infra* ¶ 25), but when that failed, Dondero shifted gears and began peddling the “inside information” angle, in multiple forums, hoping to make life difficult for Seery and anyone Dondero perceived to be supporting him.<sup>9</sup> But viewed in context, the MGM E-Mail and related allegations provide no basis for the assertion of “colorable” claims.

24. After causing the Debtor to file for bankruptcy protection in October 2019, Dondero was forced to surrender his control positions at the Debtor—including his positions as President and Chief Executive Officer—in January 2020 as part of a broader corporate governance settlement entered into to avoid the appointment of a Chapter 11 trustee. (Morris Dec. Ex. 12.) He remained an unpaid employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he then held titles, subject to the authority of the newly-appointed independent board of directors (the “Independent Board”).<sup>10</sup>

25. By the Fall of 2020, however, the Independent Board demanded (and obtained) Dondero’s resignation, and the Debtor had (1) reached proposed settlements with certain of its larger creditors, (2) proposed an asset-monetization plan, (3) obtained court approval of its

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<sup>8</sup> Notably, the MGM E-Mail is internally inconsistent because it simultaneously purports to impose a “[t]rading [r]estriction” while also stating that “sales are subject to a shareholder agreement,” which permits sales in certain circumstances.

<sup>9</sup> Neither Dondero nor HMIT ever explain how Dondero could have disclosed “material non-public inside information” that he purportedly obtained as a member of the MGM Board without violating his own fiduciary duties to MGM. The absence of any explanation is further indication that Dondero did not believe that the MGM E-Mail contained “material non-public inside information.”

<sup>10</sup> In July 2020, Seery was appointed Chief Executive Officer and Chief Structuring Officer of the Debtor. (Morris Dec. Ex. 36.)

Disclosure Statement, and (4) begun to solicit votes in support of its proposed Plan. In response to these developments and others, Dondero began disrupting preparations for the implementation of the proposed Plan. The events in the weeks leading up to the MGM E-Mail are as follows:

- October 9: In accordance with the Independent Board’s demand, made after threats and disruptions to the Debtor’s operations, Dondero is forced to resign from all positions with the Debtor and its affiliates (Morris Dec. Ex. 13);
- October 16: Dondero’s affiliates attempt to impede the Debtor’s trading activities by demanding—with no legal basis—that Seery cease selling certain assets (*id.* Ex. 14; *id.* Ex. 15 at 13–15);
- November 24: This Court enters an Order approving the Debtor’s Disclosure Statement, scheduling the confirmation hearing on the Debtor’s Plan for January 13, 2021, and granting related relief (*id.* Ex. 16);
- November 24–27: Dondero personally interferes with certain securities trades ordered by Seery (*id.* Ex. 15 at 30–36);
- November 30: The Debtor provides written notice of termination of shared services agreements with Dondero’s affiliates, NexPoint Advisors, L.P. (“NexPoint”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”); together with NexPoint, the “Advisors”) (*id.* Ex. 17);
- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes that had an aggregate face amount of more than \$60 million (*id.* Exs. 18–21);
- December 3: Dondero responds by threatening Seery in a text message: “***Be careful what you do -- last warning***” (*id.* Ex. 22 (emphasis added));
- December 10: Dondero’s interference and threat cause the Debtor to seek and obtain a temporary restraining order (“TRO”) against Dondero (*id.* Ex. 23);
- December 16: The Court denies as “frivolous” a motion filed by certain Dondero affiliates in which they sought “temporary restrictions” on certain asset sales (*id.* Ex. 24); and
- December 17: After exhausting other avenues to curtail the asset sales Debtor conducted in furtherance of the proposed Plan, Dondero sends the MGM E-Mail to Seery (*id.* Ex. 11).

2. Dondero Had No Duty To Send The MGM E-Mail To Seery And He Violated An Existing TRO When He Did So.

26. With his efforts to disrupt the proposed Plan stymied, Dondero sent the MGM E-Mail to Seery. While HMIT alleges that Dondero disclosed “material non-public information regarding Amazon and Apple’s interest in acquiring MGM” to Seery on December 17, 2020 (Compl. ¶ 45), HMIT does not state or suggest why Dondero did so.

27. That failure is unsurprising. As of December 17, 2020, Dondero owed no duty of any kind to the Debtor or any entity controlled by the Debtor because (i) in January 2020, he surrendered direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement (*see* Docket Nos. 339, 354-1 (Term Sheet)), and (ii) in October 2020, he resigned from all roles at the Debtor and affiliates.

28. Notably, Dondero admitted elsewhere that his goal in sending the MGM E-Mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple’s interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Mr. Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades.***

(Morris Dec. Ex. 9 ¶ 3 (emphasis added).)

29. Dondero had no relationship of any kind with the Debtor when he sent the MGM E-Mail, and he directly violated the TRO by sending it to Seery without copying Debtor’s counsel.<sup>11</sup> Particularly against the backdrop of Dondero’s attempted interference with the Debtor’s

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<sup>11</sup> The TRO enjoined Dondero from, among other things, “communicating... with any Board member” (including Seery) without including Debtor’s counsel. (Morris Dec. Ex. 23 ¶ 2(a).)

trading activities just weeks before and just days after December 17, 2020,<sup>12</sup> the MGM E-Mail was another transparent attempt to impede asset sales and undermine Seery's efforts to bring the Debtor's bankruptcy to a close.

3. The MGM E-Mail Did Not Disclose Material, Non-Public Inside Information.

30. HMIT's contention that the MGM E-Mail contained "material non-public inside information" is belied by press reports issued *before* December 17, 2020.

31. For example, as early as January 2020, Apple and Amazon were identified as being among a new group of "Big 6" global media companies and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report, "MGM, in particular, seems like a logical candidate to sell this year" having already held "preliminary talks with Apple, Netflix and other larger media companies." (Morris Dec. Ex. 25.)

32. In October 2020, the Wall Street Journal reported that MGM's largest shareholder, Anchorage Capital Group ("Anchorage"), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM's Board. The article reported that "[i]n recent months, Mr. Ulrich has said he is working toward a deal," and he specifically named Amazon and Apple as being among four possible buyers. (*Id.* Ex. 26.)

33. The forgoing is a small sample of publicly available information showing that MGM and Anchorage faced substantial pressure in 2020 and were contemplating a sale, and that Amazon and Apple were expected to be among interested bidders. No one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed "material interest" in acquiring MGM.

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<sup>12</sup> (Morris Dec. Ex. 15 at 30–36.)

34. Even if the MGM E-Mail contained “material non-public information” when Dondero sent it on December 17, 2020 (which it did not), its substance was fully and publicly disclosed to the market in the days and weeks that followed.

35. For example, on December 21, 2020, a Wall Street Journal article titled *MGM Holdings, Studio Behind ‘James Bond,’ Explores a Sale* (the “Wall Street Journal Article”), reported that MGM had “tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process,” and had “a market value of around \$5.5 billion, based on privately traded shares and including debt.” The Wall Street Journal Article reiterated that (i) Anchorage “has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks,” and (ii) “Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers.” (*Id.* Ex. 27.)

36. The Wall Street Journal article thus contained more information than the MGM E-Mail, insofar as the former (i) disclosed that investment bankers had been retained; (ii) disclosed the identity of the investment bankers; (iii) reported that MGM had commenced a “formal sales process”; (iv) provided an indication of market value; and (v) reiterated that Anchorage, MGM’s largest shareholder, was under pressure to sell its illiquid position and was actively “working toward a deal for the studio.”

37. The Wall Street Journal’s reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The World is not enough! Amazon Joins other Streaming services in £4bn Bidding war for Bond films as MGM Considers Selling Back Catalogue*, cited the Wall Street Journal Article and further reported that MGM “hopes to spark a battle that could interest streaming services such as Amazon Prime” (*id.* Ex. 28);

- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that “it’s now become apparent that MGM is actually up on the auction block,” noting that the Wall Street Journal was “reporting that the studio has begun a formal sale process” and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder (*id.* Ex. 29); and
  - On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition (*id.* Ex. 30).
4. Dondero’s Conduct Confirms That He Did Not Believe He Disclosed Material, Non-Public Inside Information To Seery; The MGM E-Mail Played No Role In The HarbourVest Settlement.

38. Dondero’s conduct further demonstrates that he did not believe he disclosed material, non-public information to Seery in December 2020.

39. HMIT contends that, upon receipt of the MGM E-Mail, “Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in the Bankruptcy Court seeking approval of the Debtor’s settlement with HarbourVest – resulting in a transfer to the Debtor’s Estate of HarbourVest’s interest in a Debtor-advised fund, Highland CLO Funding, Ltd. (“HCLOF”), which held substantial MGM debt and equity.” (Compl. ¶ 46.) These allegations do not withstand scrutiny for several reasons.

40. **First**, the Debtor and HarbourVest had already reached an agreement in principle—including the core question of consideration—to settle their disputes on December 10, 2020, **a week before** Dondero sent the MGM E-Mail to Seery. (*See* Morris Dec. Ex. 31.)<sup>13</sup> Thus, even assuming that the MGM E-Mail contained “material non-public inside information” (which it did

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<sup>13</sup> In its motion for approval of the HarbourVest settlement, Highland valued the interest in HCLOF that it was receiving as part of the settlement of HarbourVest’s claim at \$22.5 million. Dondero and other affiliates ostensibly controlled by Patrick have previously alleged that the valuation was “stale.” It was not; rather, it was based on the then most recent report made available to holders of interests in HCLOF, including Dondero. (Morris Dec. Ex. 31-a.) In any event, HCLOF did not directly own any “MGM debt and equity.”

not), the substance of that communication played no role in Seery's negotiations, which had concluded before he received the MGM E-Mail.

41. *Second, neither Dondero nor any of his affiliates ever raised this issue with the Court when lodging objections to the HarbourVest settlement, which were filed just weeks after Dondero sent the MGM E-Mail to Seery. In fact, Dondero contended that the Debtor was overpaying HarbourVest via the settlement to buy votes and that the settlement was neither reasonable nor in the best interests of the Debtor's estate. (Morris Dec. Ex. 32.)*

42. Dondero and HMIT cannot reconcile their current assertion that Seery misused allegedly "material, non-public inside information" with their failure to object to the HarbourVest settlement on that basis.

5. The Texas State Securities Board Has Determined That No Action Is Warranted.

43. In its Motion, HMIT claimed that the Texas State Securities Board (the "TSSB") "opened an investigation into the subject matter of the insider trades at issue," and argued that the "continuing nature of this investigation underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely 'colorable.'" (Mot. ¶ 37.)

44. HMIT's characterization is misleading because the TSSB never "opened an investigation"; rather, the TSSB reviewed a "complaint" (undoubtedly filed at Dondero's direction). That review is now complete. On May 9, 2023, the TSSB issued the following statement:

The staff of the Texas State Securities Board (the "Staff") has completed its review of the complaint received by the Staff against Highland Capital Management, L.P. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.

(Morris Dec. Ex. 33.)

45. The TSSB’s decision that no further action is warranted underscores the Highland Parties’ position that the claims described in the proposed Complaint are neither plausible nor “colorable.”

**E. HMIT’s Allegations Concerning Seery’s Alleged Relationships With The Claims Purchasers Are Unsupported And Provide No Foundation For The Purported Inferences.**

46. HMIT asserts that Seery and the Claims Purchasers had substantial pre-existing relationships that provided the foundation for the alleged “*quid pro quo*.” (See, e.g., Compl. ¶¶ 14, 47–48.) These allegations appear to be based solely on a review of Seery’s resume and some internet searches conducted as part of the “investigation” commissioned by Dondero, the results of which were presented to the EOUST in an unsuccessful effort to convince that agency to investigate further. (See Mot. Ex. 2 ¶ 4 & Exs. A–B.) As HMIT’s pleadings and the documents presented to the EOUST show, and as will be further established at the hearing, these conclusory allegations have no basis in fact.

1. HMIT’s Allegations Concerning Stonehill

47. HMIT’s conclusory allegation that Seery and Stonehill had a “close business relationship” is based on two alleged “facts.”

48. **First**, HMIT contends that Seery “joined a hedge fund, River Birth Capital,” that “served on the creditors committee in other bankruptcy proceedings” with Stonehill. (Compl. ¶ 48.) But HMIT fails to (i) identify those proceedings or when they occurred; (ii) allege that Seery was aware of, let alone participated in, any “bankruptcy proceedings” with Stonehill; or (iii) suggest how the unidentified “bankruptcy proceedings” resulted in a relationship close enough to support the wide-ranging conspiracy HMIT imagines.

49. HMIT tries to bolster this supposed connection by pointing to a decade-old court filing showing that the law firm for which Seery worked (Sidley Austin LLP) represented a “Steering Group of Senior Secured Noteholders” in the Blockbuster bankruptcy, and that, at some point, Stonehill was one of five members of that group. (Mot. Ex. 2 at A-66.)<sup>14</sup> There is no evidence or non-conclusory allegation that Seery (or his then-firm) ever represented Stonehill individually or that any individual involved in the Blockbuster bankruptcy on Stonehill’s behalf had any involvement in Stonehill’s decision to purchase claims in the Highland bankruptcy.

50. **Second**, HMIT alleges that (i) a global asset management firm called GCM Grovesnor held four seats on the Redeemer Committee; (ii) “upon information and belief” GCM Grovesnor “is a significant investor in Stonehill and Farallon”; (iii) Grovesnor “through Redeemer, played a large part in appointing Seery as a director of Strand Advisors”; and (iv) Seery was therefore “ beholden to Grovesnor from the outset, and, by extension, Grovesnor’s affiliates Stonehill and Farralon [*sic*].” (*Id.*)

51. These allegations, however, are based on unsupported speculation and tortured inferences, and certain of them make no sense.<sup>15</sup>

2. HMIT’s Allegations Concerning Farallon

52. Likewise, the speculative and unsupported allegations concerning Seery’s alleged relationship with Farallon cannot withstand scrutiny.

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<sup>14</sup> The Complaint incorrectly claims that “Seery represented Farallon as its legal counsel” (Compl. ¶ 48), but its Motion appends a court filing referring to Stonehill (Mot. Ex. 2 at A-66).

<sup>15</sup> For example, HMIT alleges that Grovesnor is a “significant investor” in Stonehill and Farallon and that Grovesnor is an “affiliate” of Stonehill and Farallon, while also effectively alleging that Stonehill and Farallon fleeced the Redeemer Committee by buying its claim while in possession of “material, non-public inside information.” Notably, the Redeemer Committee—the actual party that would have been harmed if HMIT’s allegations had any merit (which they do not)—has never sought to intervene in this matter even though Dondero first floated these allegations in 2021 as part of the First Rule 202 Petition (nor, for that matter, has Acis, UBS, or HarbourVest ever voiced any concerns about supposedly being victimized by the Claims Purchasers).

53. HMIT alleges “upon information and belief” that Seery “conducted substantial business with Farallon” while he was the Global Head of Fixed Income Loans at Lehman Brothers. (Compl. ¶ 48.) But the only “fact” supposedly supporting this broad allegation is a single page taken from (what appears to be) a Lehman Brothers real estate group promotional document stating that Farallon participated in a secured real estate loan in 2007. (Mot. Ex. 2 at A-65.) HMIT does not allege that Seery knew of, let alone participated in, this transaction, nor does it identify any other business (let alone “substantial business”) that Seery allegedly conducted with Farallon while at Lehman Brothers.

**F. HMIT’s “Insider Trading” Allegations Are Unsupported And Provide No Foundation For The Purported Inferences.**

54. One of HMIT’s principal allegations is that, as part of the purported *quid pro quo*, Seery disclosed to the Claims Purchasers “material non-public inside” information concerning MGM that he obtained from Dondero to entice them to buy claims in Highland’s bankruptcy case. (*See, e.g.*, Compl. ¶¶ 13, 47, 50, 83, 89.)

1. Dondero’s Description Of His Communication(s) With Farallon Have Changed Over Time.

55. HMIT’s Motion is based in substantial part on Dondero’s description of communication(s) he purportedly had with one or two representatives of Farallon in the “late spring” of 2021 concerning Farallon’s acquisition of certain claims in the Highland bankruptcy. (Mot. ¶ 1 & Ex. 3; Morris Dec. Ex. 9.)

56. Because (i) Dondero’s description of his communication(s) with Farallon has substantially changed over time, (ii) neither HMIT nor Dondero offer any rational reason why Farallon would voluntarily confess to improprieties to a third party with a well-earned reputation

for using overly aggressive litigation tactics, and (iii) certain aspects of his various descriptions are contradicted by documentary evidence, they cannot be the basis for any claim.<sup>16</sup>

57. In the First Rule 202 Petition filed in July 2021, Dondero swore, among other things, that:

[Seery] has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.

On a telephone call between [Dondero] and a representative of Farallon, Michael Lin [*sic*], Mr. Lin [*sic*] informed [Dondero] that Farallon had purchased the claims sight unseen—relying entirely on Mr. Seery’s advice solely because of their prior dealings.

As Highland’s current CEO, Mr. Seery had non-public, material information concerning Highland. Upon information and belief, such non-public, material information was the basis for instructing Farallon to purchase the Claims.

(Morris Dec. Ex. 3 ¶¶ 20–21, 23 (“Version 1”).)

58. Version 1 is notable because it (i) did not state what Dondero said, if anything, (ii) referred to a single phone call, (iii) made no mention of MGM, (iv) made no mention of Raj Patel (who features later); and (v) stated only “upon information and belief” that Farallon purchased the Claims based on “non-public, material information.”<sup>17</sup>

59. On May 2, 2022, Dondero amended the First Rule 202 Petition. In his new verified pleading, Dondero swore, among other things, that:

[Seery] has an age-old connection to Farallon and, upon information and belief, advised Farallon to purchase the claims.

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<sup>16</sup> Notably, there is no allegation that anyone ever communicated with Stonehill about its claims purchases (let alone obtained a “confession”); thus, HMIT’s “conspiracy” theory against Stonehill rests on nothing but rank speculation based on unsupportable inferences.

<sup>17</sup> Later in 2021, Dondero “commissioned an investigation by counsel” who produced written reports to the EOUST. The first such report was prepared by Douglas Draper, counsel to Dondero’s family trusts, and delivered to the EOUST on October 5, 2021. Draper provided several reasons to support his speculation that “Farallon and Stonehill may have been provided material, non-public information to induce their purchase of claims” and to justify his request for further investigation—but conspicuously failed to mention Dondero’s telephone call(s) with Farallon. (Mot. Ex. 2-A at 7.)

On a telephone call between [Dondero] and Michael Lin [*sic*], a representative of Farallon, Mr. Lin [*sic*] informed [Dondero] that Farallon had purchased the claims sight unseen ***and with no due diligence—100% relying on Mr. Seery’s say-so because they had made so much money in the past when Mr. Seery told them to purchase claims.***

In other words, ***Mr. Seery had inside information on the price and value of the claims that he shared with no one but Farallon for their benefit.***

(*Id.* Ex. 4 ¶¶ 22–24 (“Version 2”) (emphasis added).)

60. Like Version 1, Version 2 also (i) did not state what Dondero said, if anything; (ii) referred to a single phone call; (iii) made no mention of MGM; and (iv) made no mention of Raj Patel. But in contrast to Version 1, Version 2 embellished Linn’s alleged comments and—more importantly—now expressly asserted that Seery “shared” inside information with “no one but Farallon” rather than adopting Version 1’s statement that “upon information and belief,” Farallon purchased the Claims based on “non-public, material information.”<sup>18</sup>

61. About four weeks later, Dondero provided yet another version of his discussion with Linn. In a declaration sworn to on May 31, 2022, Dondero stated, among other things, that:

Last year, I called Farallon’s Michael Lin [*sic*] about purchasing their claims in the bankruptcy. ***I offered them 30% more than what they paid.*** I was told by Michael Lin [*sic*] of Farallon that they purchased the interests ***without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid.***

(*Id.* Ex. 5 ¶ 2 (“Version 3”) (emphasis added).)

62. Version 3 introduces several new topics. For example, Dondero asserts for the first time that he called Linn because he was interested in purchasing Farallon’s claims. Dondero also

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<sup>18</sup>If, as Dondero contends, Seery “shared” inside information with “no one but Farallon,” then he did not share the inside information with Stonehill.

asserts that he offered “30% more than what they paid.”<sup>19</sup> Finally, and significantly, Dondero asserts for the first time that Linn reported Seery telling him that the “interests would be worth far more than what Farallon paid.”

63. On February 15, 2023, Dondero filed yet another sworn statement concerning his 2021 discussion(s) with Farallon, this time in support of HMIT’s Verified Rule 202 Petition. (*Id.* Ex. 9.) In this version, Dondero stated that:

In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC (“Farallon”), **Raj Patel** and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the **Acis and HarbourVest claims**, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Mr. Seery because they had made significant profits when Mr. Seery told them to purchase other claims in the past. **They also stated that they were particularly optimistic because of the expected sale of MGM.**

(*id.* Ex. 9 ¶ 4 (“Version 4”) (emphasis added).)

64. Version 4 introduces still more new topics. For example, Dondero asserted for the first time that (i) more than one telephone call occurred; (ii) Raj Patel also participated in these calls on Farallon’s behalf; (iii) he was told that “Farallon had a deal in place to purchase the Acis and HarbourVest claims”; and (iv) he learned that Farallon was “**particularly optimistic because of the expected sale of MGM.**”

65. Finally, in its Motion, HMIT attributes statements to Farallon that even Dondero never described. For example, HMIT contends that “Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.’s (‘Amazon’) interest in

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<sup>19</sup> Ironically, Dondero appears to have offered to purchase Farallon’s claims without conducting any due diligence because (i) he provides no indication that he knew at that time how much Farallon paid for its claims yet he blindly offered to pay “30% more than what” Farallon paid, and (ii) HMIT alleges that the Debtor was not transparent. (*See* Compl. ¶¶ 51–53.)

acquiring Metro-Goldwyn-Mayer Studios Inc.” (Mot. ¶ 32.)<sup>20</sup> While HMIT cites Version 4 as support, neither that version nor any prior version is consistent with HMIT’s description of Dondero’s purported communication(s) with Farallon.<sup>21</sup>

2. Dondero’s Offer to Purchase Farallon’s and Stonehill’s Claims In 2022 Contradicts HMIT’s Allegations.

66. According to HMIT, Dondero offered to buy Farallon’s claims in the Highland bankruptcy for 30% more than what Farallon was paid, but that Farallon insisted it would not sell at any price. (Morris Dec. Ex. 5 ¶ 2.)

67. Yet, on October 14, 2022, before the Second Rule 202 Petition was filed, HCMFA (one of Dondero’s advisory firms) made written offers to Stonehill and Farallon to purchase their claims at cost “plus a five percent (5%) return.” (Morris Dec. Ex. 35.) Dondero’s offer to purchase claims at 5% above cost is inconsistent with his purported knowledge that Farallon would not sell at any price.

**G. A Rational Basis Exists For the Claims Purchases—Although Only the Claim Sellers Could Have Been Harmed in Any Event.**

68. HMIT insists that it “made no sense” for the Claims Purchasers to buy claims because “the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk,” and “their investment was projected to yield a small return with

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<sup>20</sup> This purported statement that HMIT attributes to Farallon makes little sense because the MGM-Amazon deal was publicly announced on May 26, 2021 (Morris Dec. Ex. 34), before Dondero and Farallon ever spoke.

<sup>21</sup> Conspicuously absent from HMIT’s pleadings is any evidence corroborating any of the five versions of Dondero’s conversation(s) with Farallon. Given the importance of the Farallon’s alleged confessional, one would have expected Dondero to contemporaneously (i) send a confirming e-mail to Farallon to make sure there was a written record of the discussion, (ii) send an e-mail to a colleague so that others were informed, (iii) make notes to himself; or (iv) tell someone what happened. Yet, no such corroborating evidence was presented or referred to in the First Rule 202 Petition, either of the EOUST Letters, the Second Rule 202 Petition, the Motion, the original proposed Complaint, the Supplement, or the amended proposed Complaint.

virtually no margin for error.” (Compl. ¶ 3.) HMIT’s arguments are belied by the publicly available facts and its own allegations.

69. In advance of Plan confirmation, the Debtor projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. (Docket No. 1875 Ex. A.) In its proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims. (Compl. ¶ 42.) Taking into account the face amount of the allowed claims, the Claims Purchasers’ projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value <sup>22</sup>	Purchaser	Purchase Price	Projected Profit
Redeemer	\$137.0	\$0.0	\$97.71	Stonehill	\$78.0	\$19.71
Acis	\$23.0	\$0.0	\$16.4	Farallon	\$8.0	\$8.40
HarbourVest	\$45.0	\$35.0	\$32.09	Farallon	\$27.0	\$5.09
UBS	\$65.0	\$60.0	\$46.39	Stonehill & Farallon	\$50.0	(\$3.61)

70. As HMIT acknowledges, by the time Dondero spoke with Farallon in the “late spring” of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest. (Compl. ¶ 41 n.12.)<sup>23</sup> Based on an aggregate purchase price of \$113 million, the Claims Purchasers would have expected to net over \$33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections because they also purchased the Class 9 claims, and would therefore capture any upside. In this context, HMIT assertions in its proposed Complaint lack any rational basis.

<sup>22</sup> “Ascribed Value” is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

<sup>23</sup> The UBS claims were not acquired until August 2021, long after the alleged “*quid pro quo*” was supposedly agreed upon and the MGM-Amazon deal was announced. (Morris Dec. Ex. 34.)

71. Notably, none of the selling claimholders—all of which are sophisticated parties that were represented by sophisticated counsel—have raised any objections or complaints. In fact, three of the four selling claimholders (Redeemer, Acis, and UBS) were members of the Official Committee of Unsecured Creditors.

72. Finally, even if HMIT’s allegations had any merit (they do not), only the selling claimholders would have cause to complain. The estate (and HMIT) would not have been harmed because it made (and may in the future make) the exact same distributions to claimholders regardless of what entity owns the claims.

**H. Seery’s Compensation Structure Is Consistent With The Plan And The Trust Agreement, And Was The Product Of Arms’-Length Negotiations.**

73. According to HMIT, Seery provided “material non-public information” to the Claims Purchasers so that he could someday “plant friendly allies onto the [COB] to rubber stamp compensation demands.” (Mot. ¶ 22; *see also id.* ¶¶ 3, 24, 48.) HMIT alleges in its revised Complaint:

As part of the scheme, the Defendant Purchasers obtained a position to approve Seery’s ongoing compensation – to Seery’s benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT. Initially, Seery’s compensation package was composed of a flat monthly pay [sic]. Now, however, it is also performance based. This allows the Defendant Purchasers to satisfy the *quid pro quo* at the heart of the scheme. Seery would help the Defendant Purchasers make large profits and they would help enrich Seery with big pay days.

(Compl. ¶ 4.)

74. Notably, these allegations (i) describe a compensation structure that is *entirely consistent with* the incentive compensation plan structure in the Court-confirmed Plan and set forth in the Trust Agreement; and (ii) are devoid of any actual facts (*e.g.*, the terms of Seery’s compensation plan or how it was calculated or negotiated). In reality, Seery’s compensation

package was the product of arm's-length negotiations with the COB (including the active participation of the COB's independent member) over a four-month period, the result of which was an incentive compensation plan that aligned Seery's interests with those of the Claimant Trust Beneficiaries (*i.e.*, to maximize value and creditor recoveries).

75. As a threshold matter, HMIT's allegation that "[i]nitially, Seery's compensation package was composed of a flat monthly pay [*sic*]" (Compl. ¶ 4) is plainly wrong. Seery was appointed Highland's Chief Executive Officer (effective as of March 15, 2020) pursuant to a Bankruptcy Court order entered on July 16, 2020 without objection. (Morris Dec. Ex. 36 (the "July Order").) The July Order approved the terms of a separate employment agreement (a copy of which was included in the Debtor's motion (Docket No. 774 Ex. A-1) and attached to the July Order) (the "Original Employment Agreement").

76. Under the Original Employment Agreement, Seery was to receive (i) Base Compensation in the amount of \$150,000 per month, **plus** (ii) a Restructuring Fee, the amount of which would be determined by whether a Case Resolution Plan (*i.e.*, a plan with substantial creditor support) or a Monetization Vehicle Plan (*i.e.*, a plan lacking substantial creditor support) was achieved (as those terms are defined in the Original Employment Agreement).

77. On November 24, 2020, after notice and a hearing, the Bankruptcy Court entered an Order (Docket No. 1476) approving the adequacy of *The Disclosure Statement of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (Morris Dec. Ex. 37 (the "Disclosure Statement").) The Disclosure Statement provided in pertinent part that:

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement . . . The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(*Id.* Art. III.F.2(e); *see* Plan Art. IV.B.6 (incorporating identical language).)

78. The Trust Agreement was part of a Plan Supplement (as amended) filed in advance of the confirmation hearing (Morris Dec. Ex. 38), and provided in pertinent part:

Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the “Base Salary”). Within the first forty-five days following the Confirmation Date, the Claimant Trustee on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(Trust Agmt. § 3.13(a)(i).)<sup>24</sup>

79. The Plan went effective on August 11, 2021, and, as a result, the COB was formed. The COB ultimately had three members: a representative of Farallon (Michael Linn), a representative of Stonehill (Christopher Provost), and an independent member (Richard Katz).

80. On August 26, 2021, the COB held a regularly scheduled meeting during which it discussed the incentive compensation program (“ICP”). The minutes of this meeting reflect that:

Mr. Seery also presented the Board with an overview of his Incentive Compensation Program proposal which would include not only Mr. Seery but the current HCMLP team. (The terms and structure of the proposal had been previewed with the Board in prior operating models presented by Mr. Seery.) Mr. [Seery] reviewed the proposal and stated his view that the proposal was market based and was designed to align incentives between himself and the HCMLP team on the one hand and the Claimant Trust [B]eneficiaries on the other. ***The Board asked questions regarding proposal and determined that is [sic] would consider the proposal and revert to Mr. Seery with a counter proposal.***

(Morris Dec. Ex. 39 (emphasis added).)

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<sup>24</sup> Seery was designated as the “Claimant Trustee” under the Trust Agreement. (Trust Agmt. 38 §1.1(e).)

81. Far from being a “rubber stamp,” the minutes show that the COB did not simply accept Seery’s initial proposed ICP but “asked questions” and indicated that it would provide a “counter proposal.”

82. On August 30, 2021, the COB convened for “an off-cycle (non-regular) meeting.” As reflected in the minutes of this meeting, the COB again discussed the ICP:

Mr. Katz began the meeting by walking the Oversight Board and Mr. Seery through the Oversight Board’s counter-proposal to the HCMLP incentive compensation proposal, including the review of a spreadsheet and summary of the counter-proposal. Discussion was joined by Mr. Linn and Mr. Stern. Mr. Seery asked numerous questions and received detailed responses from the Oversight Board. ***Mr. Seery and the Oversight Board agreed to continue the discussion and negotiations regarding the proposed incentive compensation plan for the Claimant Trustee and the HCMLP [employees].***

(*Id.* Ex. 40 (emphasis added).)

83. Seery and the COB continued to exchange and discuss additional proposals and counter-proposals over the coming months.<sup>25</sup> Finally, on December 6, 2021, Seery and the COB executed a Memorandum of Agreement stating that:

In accordance with the provisions of the Highland Claimant Trust Agreement and the Highland Capital Management, L.P. (“HCMLP”) Plan of Reorganization, ***the Oversight Board of the Highland Claimant Trust and the Claimant Trustee/Chief Executive Officer of HCMLP engaged in robust, arm’s length and good faith negotiations regarding the incentive compensation program for the Claimant Trust/CEO and the HCMLP post-effective date operating team (“HCMLP Team”). After considering various structures and incentives to motivate performance on behalf of the Claimant Trust,*** the parties reached the binding

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<sup>25</sup> In particular, (i) Seery delivered another proposal to the COB on October 9, 2021, which he further revised later in the month; (ii) Katz (the independent COB member) responded on behalf of the COB on October 26 and proposed that the parties agree upon the structure of the proposal before addressing the specific numbers; (iii) Seery responded on November 3; (iv) further discussions were held on November 9; (v) on November 17, Linn provided a “wholesome response” in which he “updated the term sheet” and raised certain issues that he did not believe would have “much a difference for this negotiation”; (vi) Seery wrote to the COB indicating that he wanted to “finalize the ICP” but had “a couple of asks and one question”; and (vii) still further negotiations took place thereafter.

agreement reflected in the attached HCMLP and Claimant Trust Management Incentive Compensation Program.

(Morris Dec. Ex. 41 (emphasis added).)

84. Notably, in November 2021, one of the “investigative reports” commissioned by Dondero incorrectly speculated that “Mr. Seery’s success fee presumably will be based on whether the Plan outperforms what was disclosed in the Plan Analysis.” (Mot. Ex. 2-B at 14.) In fact, Seery’s bonus is tied to creditor recoveries so that the interests of stakeholders are aligned.

85. Dondero’s commissioned report also incorrectly “estimate[d] that, based on the estate’s [alleged] \$600 million value today, *Mr. Seery’s success fee could be approximate [sic] \$50 million.*” (*Id.*) In reality, under the negotiated terms of the ICP (Morris Dec. Ex. 41), the maximum bonus Seery can receive is approximately \$8.8 million—which would require all Class 8 and 9 claimholders to receive cash distributions for the full amount of their claims plus interest—82.4% less than the baseless success fee presented to the EOUST on Dondero’s behalf.

### RELEVANT PROCEDURAL HISTORY

86. To avoid the appointment of a Chapter 11 trustee, on January 9, 2020, this Court approved a settlement (the “January Order”; Docket No. 339) removing Dondero from control of Highland and appointing an Independent Board consisting of John Dubel, Russell Nelms, and Seery (the “Independent Directors”). The January Order prohibited litigation against the Independent Directors without this Court’s prior authorization and limited claims to those arising from willful misconduct or gross negligence.<sup>26</sup>

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<sup>26</sup> (January Order ¶ 10 (“No entity may commence or pursue a claim or cause of action of any kind against any Independent Director . . . relating in any way to the Independent Director’s role as an independent director . . . without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director . . .”).)

87. Highland later moved to have Seery appointed its Chief Executive Officer and Chief Restructuring Officer. This Court approved his appointment in the July Order (Morris Dec. Ex. 36), which like the January Order, prohibited litigation against Seery without this Court’s prior authorization and limited claims to those arising from willful misconduct or gross negligence.<sup>27</sup>

88. On February 22, 2021, this Court issued the Confirmation Order confirming the Plan. The confirmed Plan included the Gatekeeper Provision prohibiting Enjoined Parties, including HMIT, from bringing claims against Protected Parties, including Seery, unless, after notice and a hearing, this Court found the claims “colorable.” (Plan Art. IX.F.) The Gatekeeper Provision was affirmed by the Fifth Circuit. *NexPoint*, 48 F.4th at 425–26, 435–39. The detail factual findings in the Confirmation Order supporting the Gatekeeper Provision were not challenged or disturbed on appeal.

89. On August 11, 2021, the Plan became effective (Docket No. 2700), and pursuant to the Plan:

- All prepetition partnership interests in the Debtor, including HMIT’s, were cancelled;
- HCMLP was reorganized as a Delaware limited liability partnership;
- The Trust, a Delaware statutory trust, was established pursuant to the Trust Agreement;
- HCMLP’s limited partnership interests were issued to the Trust;
- HCMLP’s general partnership interests were issued to HCMLP GP LLC, a newly-established Delaware limited liability company;

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<sup>27</sup> (July Order ¶ 5 (“No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery . . . .”).)

- The majority of HCMLP’s assets, including its “Causes of Action,”<sup>28</sup> were transferred to the Trust;
- Seery was appointed reorganized HCMLP’s Chief Executive Officer and trustee of the Trust (the “Claimant Trustee”);
- “Estate Claims” (*i.e.*, Causes of Action against HCMLP’s insiders)<sup>29</sup> were transferred to the newly-established Highland Litigation Sub-Trust (the “Litigation Trust”), a Delaware statutory trust and subsidiary of the Trust;
- An oversight board was appointed to oversee the management of the Trust, reorganized HCMLP, and the Litigation Trust;
- Holders of allowed general and subordinated unsecured claims (*i.e.*, Class 8 and 9) received interests in the Trust (collectively, the “Trust Interests”) and became “Claimant Trust Beneficiaries” (as defined in the Plan); and
- Holders of the Debtor’s prepetition partnership interests (*i.e.*, Class 10 and 11) were allocated unvested contingent interests (the “Contingent Interests”) in the Trust that vest if, and only if, the Claimant Trustee certifies that all Claimant Trust Beneficiaries (*i.e.*, Class 8 and 9) have been paid in full, Class 8 have received post-petition interest, and all disputed claims in Class 8 and 9 have been resolved.

(See Plan Art. IV.)

90. On October 8, 2021, the Trust irrevocably transferred and assigned to the Litigation Trust “any and all Causes of Action not previously transferred or assigned by operation of the Plan, the Litigation Sub-Trust Agreement, or otherwise” except for causes of action then being

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<sup>28</sup> “Causes of Action” are defined in the Plan as: “any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law.” (Plan Art. I.B.19.)

<sup>29</sup> “Estate Claims” are defined in the Plan as “estate claims and causes of action against Dondero, Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing” other than causes of action against any current employee of Highland other than Dondero. (Plan Art. I.B.61.)

pursued by the Trust or which the Trust intended to pursue on behalf of entities managed by reorganized HCMLP. (*See* Morris Dec. Ex. 42.)<sup>30</sup>

91. On March 28, 2023, HMIT filed its Initial Motion with a proposed Verified Adversary Complaint totaling 387 pages with exhibits. This Court scheduled a conference for Monday, April 24, 2023. (Docket No. 3751.) On Friday, April 21, 2023, HMIT filed objections to any evidentiary hearing or briefing on its Initial Motion. (“Objs.”; Docket No. 3758.) On Sunday, April 23, 2023, HMIT filed a Supplemental Motion with an amended proposed Verified Adversary Complaint, which added HCMLP and the Trust as nominal defendants and dropped a claim for “fraud by misrepresentation and material nondisclosure.” (Docket No. 3760.) On April 24, 2023, this Court held a conference, set a briefing schedule on the Motion, and scheduled a hearing for June 8, 2023. (Docket Nos. 3763–64.)

### LEGAL STANDARD

92. HMIT concedes, as it must, that its proposed lawsuit is subject to this Court’s “gatekeeping protocol,” and “the injunction and exculpation provision in the Plan.” (Mot. ¶¶ 1, 4, 14; Supp. Mot. ¶ 11.) But HMIT fundamentally misunderstands the threshold showing it must make to clear that hurdle.

#### **A. HMIT Misconstrues The “Colorability” Standard Established In The Gatekeeper Provision.**

93. This Court made extensive factual findings and approved the Gatekeeper Provision on two grounds: (i) “the Supreme Court’s ‘Barton Doctrine,’ *Barton v. Barbour*, 104 U.S. 126 (1881)),” and (ii) “the notion of a prefiling injunction to deter vexatious litigants[] that has been approved by Fifth Circuit.” (Confirmation Order ¶¶ 76–81.) Those doctrines operate to “prevent

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<sup>30</sup> The October 8, 2021 transfer was publicly disclosed by the Litigation Trust in its litigation with HMIT, among others. *Kirschner v. Dondero*, Adv. Proc. No. 21-03076-sgj, Docket No. 211 (Bankr. N.D. Tex. Sept. 9, 2022).

baseless litigation designed merely to harass the post-confirmation entities,” “avoid abuse of the court system,” and “preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” (*Id.* ¶ 79.) The Fifth Circuit confirmed that “the injunction and gatekeeping provisions are sound,” explaining that “[c]ourts have long recognized bankruptcy courts can perform a gatekeeping function,” including “[u]nder the ‘*Barton*’ doctrine.” *NexPoint*, 48 F.4th at 435, 438–39 (collecting cases). The Fifth Circuit further recognized that the Gatekeeper Provision here was necessary to prevent “bad-faith litigation” from consuming the resources of the reorganized debtor and those working to maximize claims of legitimate stakeholders. *Id.*

94. Under the *Barton* doctrine, “[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation.” *VistaCare*, 678 F.3d at 232 (cleaned up) (citing *Anderson v. United States*, 520 F.2d 1027, 1029 (5th Cir. 1975); *Kashani v. Fulton (In re Kashani)*, 190 B.R. 875, 885 (B.A.P. 9th Cir 1995)); see also, e.g., *CFTC v. Hunter Wise Commodities, LLC*, 2020 WL 13413703, at \*1 (S.D. Fla. Mar. 5, 2020) (“Under the *Barton* doctrine, . . . before leave to sue a receiver or trustee is granted, the plaintiff must demonstrate that he has a *prima facie* case against the trustee or receiver.”) (citing *Anderson*, 520 F.2d at 1029); *Fin. Indus. Assoc. v. SEC*, 2013 WL 11327680, at \*4 (M.D. Fla. July 24, 2013) (same). Contrary to HMIT’s contention, this standard “involves a greater degree of flexibility” than a “Rule 12(b)(6) motion to dismiss,” because “the bankruptcy court, which, **given its familiarity with the underlying facts and the parties**, is uniquely situated to determine whether a claim against the trustee has merit,” and “[t]he bankruptcy court is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor’s estate.” *VistaCare*, 678 F.3d at 233 (emphasis added).

95. To satisfy the “*prima facie* case standard,” “the movant must do more than meet the liberal notice-pleading requirements of Rule 8.” *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases). “[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless.” *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at \*2 (N.D. Ill. Nov. 30, 2000). “To apply a less stringent standard would eviscerate the protections” of the Gatekeeper Provision. *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at \*2).

96. Similarly, courts in the vexatious litigant context require the movant to “show that the claims sought to be asserted have sufficient merit,” including that “the proposed filing is both procedural and legally sound,” and “that the claims are not brought for any improper purpose, such as harassment.” *Silver v. City of San Antonio*, 2020 WL 3803922, at \*1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); *see also Silver v. Perez*, 2020 WL 3790489, at \*1 (W.D. Tex. July 7, 2020) (same). “[T]o protect courts and innocent parties from abusive and vexatious litigation[,] . . . courts may apply whatever standard deemed warranted when reviewing the proposed complaint.” *Silver*, 2020 WL 3803922, at \*6. “For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review,” such as the “plausibility” standard for a Rule 12(b)(6) motion. *Id.* Rather, courts apply “an additional layer of review,” and “may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action” or that the “litigant’s allegations are unlikely,” especially “when prior cases have shown the litigant to be untrustworthy or not credible . . . .” *Id.*

97. HMIT argues that “a claim is colorable if it is ‘plausible’ and could survive a motion to dismiss” under Rule 12(b)(6). (Mot. ¶¶ 38–42.) But HMIT’s motion does not even mention the specific bases this Court invoked in the Confirmation Order—the *Barton* doctrine and vexatious-litigant provisions—as supporting the Gatekeeper Provision, much less has HMIT identified a single case in the *Barton* doctrine or vexatious litigant context that supports its interpretation. (*Id.*; *see also* Morris Dec. Ex. 43 at 15:25–16:4 (THE COURT: “[D]id you find any legal authority in the *Barton* doctrine context that you think sheds light? Because that seems to me the most analogous context, right?” MR. MCENTIRE: “Specifically to answer -- to respond to your question directly, the answer is no.”).) HMIT relies instead on cases from inapposite contexts, such as whether a bankruptcy court should grant a creditor’s committee derivative standing after a trustee or debtor-in-possession declined to pursue a claim.<sup>31</sup> None of those cases, of course, involves gatekeeping orders entered in response to a pattern of abusive conduct that specifically rely on *Barton* and vexatious-litigant authorities. Moreover, and as discussed below, even those cases recognize that a claim must not only be likely to survive a motion to dismiss, but also that the debtor has “unjustifiably” refused to pursue it. *La. World*, 858 F.2d at 247–48. That requirement demands that the proposed claims be subjected to a realistic cost-benefit analysis, which here would be fatal to HMIT’s speculative, Hail Mary conspiracy theory.

98. HMIT also relies on a series of cases that are even farther afield from the Gatekeeper Provision here. Those include benefits coverage disputes under ERISA, Medicare

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<sup>31</sup> *See La. World Expo. v. Fed. Ins. Co.*, 858 F.2d 233, 247–48 (5th Cir. 1988); *PW Enters. v. N.D. Racing Comm’n (In re Racing Servs., Inc.)*, 540 F.3d 892, 900 (8th Cir. 2008); *Larson v. Foster (In re Foster)*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014); *Canadian Pac. Forest Prods. v. J.D. Irving, Ltd. (In re Gibson Grp.)*, 66 F.3d 1436, 1446 (6th Cir. 1995); *Official Comm. v. Hudson United Bank (In re America’s Hobby Ctr.)*, 225 B.R. 275, 282 (Bankr. S.D.N.Y. 1998).

coverage disputes, and constitutional challenges.<sup>32</sup> None of those cases implicate the *Barton* doctrine and vexatious-litigant concerns. (See Mot. ¶¶ 39–41; Objs. ¶¶ 9–13.)

## B. Evidentiary Hearing

99. Courts in the *Barton* doctrine context regularly conduct an evidentiary hearing to determine whether a proposed complaint meets the necessary threshold. “Whether to hold a hearing is within the sound discretion of the bankruptcy court.” *VistaCare*, at 232 n.12 “[T]he decision whether to grant leave may involve a ‘balancing of the interests of all parties involved,’ which will ordinarily require an evidentiary hearing. *Id.* at 233 (quoting *Kashani*, 190 B.R. at 886–87). In *VistaCare*, for example, the bankruptcy court “held a hearing on CGL’s motion for leave” in which “the sole owner of CGL, and the Trustee, testified.” *Id.* at 223, 232. The Fifth Circuit has affirmed a colorability analysis in the *Barton* context, which involved an evidentiary hearing, without any concern that the inquiry was somehow improper. See *Foster v. Aurzada (In re Foster)*, 2023 WL 20872, at \*1 (5th Cir. Jan. 3, 2023) (affirming dismissal of an action to sue a trustee under *Barton* “[a]fter a hearing [by] the bankruptcy court”); *Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at \*4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after “a

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<sup>32</sup> See *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has “a colorable claim to vested benefits” such that the employee may be considered a “participant” under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting “claimants [with] no colorable legal claim” to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant’s double jeopardy claim was “colorable” such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at \*3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a “colorable claim” against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at \*3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a “colorable claim” to warrant the district court’s exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at \*5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at \*5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a “colorable constitutional claim” such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

close examination” of the evidence revealed only that the trustee “acted within the scope of [his] duties”), *aff’d* 799 F. App’x 271 (5th Cir. 2020).

100. Recognizing that the *Barton* doctrine requires more than a mere Rule 12(b)(6) analysis, courts of appeals routinely review “a bankruptcy court’s decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.” *VistaCare*, 678 F.3d at 224 (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)).<sup>33</sup> Application of the Rule 12(b)(6) standard, of course, is subject to *de novo* review. Indeed, as this Court noted at the April 24, 2023 status conference, HMIT’s “original motion for leave attached something like 387 pages of not just Dondero affidavits, but other evidentiary support,” which is inconsistent with HMIT’s position that this Court “just need[ed] to look at the four corners and apply a 12(b)(6) standard.” (Morris Dec. Ex. 43 at 43:16–18, 44:4–7.) Although HMIT’s belatedly counsel suggested it might seek to “withdraw the Dondero affidavits” (*id.* at 22:17–18), HMIT has filed no such motion and “reserve[d] the opportunity to revisit the issue of withdrawing Mr. Dondero’s declarations” (*id.* at 55:1–5). As this Court noted, “parties are always given the chance to cross-examine an affiant or a declarant.” (*Id.* at 22:2–3.) This Court should exercise its discretion to hold an evidentiary hearing to permit the parties to present evidence, including through cross-examination of Dondero—even if HMIT now engages in gamesmanship by seeking to withdraw the Dondero declarations before the hearing.

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<sup>33</sup> Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at \*3 (B.A.P. 10th Cir. Apr. 27, 2021) (“[T]he Bankruptcy Court’s decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . .”) (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App’x 969, 973–74 (11th Cir. 2016) (“Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court’s ruling on a *Barton* motion for an abuse of discretion.”) (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at \*3 (B.A.P. 1st Cir. Sept. 17, 2014) (“Appellate courts review a bankruptcy court’s decision to deny a motion for leave to sue under the abuse of discretion standard.”) (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

### **C. Exculpation and Release**

101. This Court’s January Order and July Order exculpated Seery from all claims except “those alleging willful misconduct and gross negligence.” (January Order ¶ 10; July Order ¶ 5.) The Plan’s exculpation provision also limited claims against Seery, in his role as an Independent Director, to those arising “from willful misconduct, criminal misconduct...or gross negligence.” (Plan Art. IV.D; Confirmation Order ¶¶ 72–73.) The Trust Agreement similarly limits claims against Seery to “fraud, willful misconduct, or gross negligence.” (Trust Agmt. § 8.1; *see also id.* §§ 8.3–8.4.) Thus, HMIT cannot assert claims other than those expressly permitted under these Orders and court-approved documents.

## **ARGUMENT**

102. HMIT lacks standing to bring the derivative claims alleged in the Complaint (*see infra* Sections I–II), did not satisfy the procedural requirements to bring derivative claims (*see infra* Section III), and cannot bring derivative claims under the guise of direct claims (*see infra* Section IV). Even if HMIT could assert claims (which it cannot), they fail under any standard (*see infra* Section V).

### **I. HMIT Lacks Standing To Bring Derivative Claims Under Delaware Law.**

103. HMIT acknowledges that any “fiduciary duties and claims involving breaches of those duties” with respect to HCMLP and the Claimant Trust are “governed by Delaware law” under the “Internal Affairs Doctrine.” (Motion ¶ 21 & n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity)); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). HMIT lacks standing to bring any such claims under Delaware law.

**A. HMIT Lacks Standing To Bring Derivative Claims On Behalf Of The Trust.**

104. The Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29. (Compl. ¶ 26.) “[T]o proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement” such that “the plaintiff must be a beneficial owner” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.” *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at \*19 n.123 (Del. Ch. June 15, 2011), *aff’d* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b). This requirement is “mandatory and exclusive” and only “a beneficial owner” “has standing to bring a derivative claim on behalf of the Trust.” *In re Nat’l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)).

105. HMIT is not a “beneficial owner” of the Trust and therefore lacks standing to bring derivative claims on its behalf. The “beneficial owners” of the Trust are the “Claimant Trust Beneficiaries.” (See Trust Agmt. § 2.8 (“The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . .”).) The Claimant Trust Beneficiaries are “the Holders of Allowed General Unsecured Claims” and “Holders of Allowed Subordinated Claims.” (Plan Art. I.B.44; *see also* Trust Agmt. § 1.1(h).)<sup>34</sup> HMIT is neither. HMIT was an “equity holder in the

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<sup>34</sup> (See Morris Dec. Ex. 1, Plan Art. I.B.44 (“‘Claimant Trust Beneficiaries’ means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.”); Trust Agmt. at 1 n.2 (“For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.”).)

Original Debtor” and now holds only an unvested “Contingent Trust Interest in the Claimant Trust.” (Compl. ¶ 24.) HMIT argues, without justification, that it “should be treated as a vested Claimant Trust Beneficiary.” (*Id.*) But, under the Trust Agreement, “Contingent Trust Interests” “shall not have any rights under this Agreement” and will not “be deemed ‘Beneficiaries’ under this Agreement,” “unless and until” they vest in accordance with the Plan and Trust Agreement. (Trust Agmt. § 5.1(c).) Because it is undisputed that the Contingent Trust Interests have not vested, HMIT is not a “beneficial owner” and lacks standing to bring derivative claims under Delaware law. *See Nat’l Coll.*, 251 A.3d at 190–92 (dismissing creditors’ derivative claims because they were not “beneficial owners of the Trusts”); *Hartsel*, 2011 WL 2421003, at \*19 n.123 (dismissing derivative claims by investors that “no longer own shares” because “those investors no longer have standing to pursue a derivative claim”).<sup>35</sup>

**B. HMIT Lacks Standing To Bring Derivative Claims On HCMLP’s Behalf.**

106. Reorganized HCMLP is a Delaware a limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.* (Compl. ¶ 25.) To bring “a derivative action” on behalf of a limited partnership, “the plaintiff must be a partner or an assignee of a partnership interest” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.” 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) (“The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another

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<sup>35</sup> If HMIT were a Claimant Trust Beneficiary (which it is not), its claims must be brought in this Court and it has “waived any right to a trial jury.” (Trust Agmt. § 5.10(d).) HMIT would also be required to reimburse the Claimant Trustee and any member of the COB if its suit fails (*id.* § 5.10(b)), and this Court could require HMIT “to post a bond ensuring that the full costs of a legal defense can be reimbursed” (*id.* § 5.10(c)). The Highland Parties reserve the right to seek reimbursement and posting of a bond commensurate with the enormous burdens this litigation would impose.

party’s fiduciary duties to them.”) (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff’d* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) (“The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.”) (citing 6 Del. C. § 17-211(h)).

107. HMIT is not a partner of reorganized HCMLP and therefore lacks standing to bring derivative claims on its behalf. “HMIT held a 99.5% limited partnership in Highland Capital Management, L.P., the Original Debtor.” (Compl. ¶ 6; *see id.* ¶¶ 12, 15, 24.) But that limited partnership interest was extinguished by the Plan on August 11, 2021 (the Effective Date of the Plan) and HMIT does not own any partnership interest in reorganized HCMLP. (Plan Art. IV.A.) Because HMIT would not hold a partnership interest at “the time of bringing the action,” it “lacks derivative standing” to bring claims “on the partnership’s behalf.” *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

108. HMIT also cannot satisfy “the continuous ownership requirement.” When HMIT’s partnership interest was extinguished on the Plan’s Effective Date, HMIT “los[t] standing to continue a derivative suit” on behalf of the Debtor.<sup>36</sup> *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff’s partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re SkyPort Global Commcn’s, Inc.)*, 2011 WL 111427, at \*25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders “lack standing to bring a derivative claim” under Delaware law because they “had their equity interests in the company extinguished pursuant to the merger under the Plan”); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) (“[T]he cancellation

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<sup>36</sup> Even before its partnership interest was extinguished, HMIT would have been required to obtain the Debtor’s consent or court approval before it could have brought a derivative suit on behalf of the estate.

of WorldCom shares under the Plan ... prevents the required continuation of shareholder status through the litigation.”) (cleaned up).

**C. HMIT Lacks Standing To Bring A “Double Derivative” Action.**

109. “[A] double derivative suit is one brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled.” *Lambrecht v. O’Neal*, 3 A.3d 277, 282 (Del. 2010). Under “Delaware’s ‘double derivative’ standing jurisprudence,” “parent level standing is required to enforce a subsidiary’s claim derivatively.” *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

110. To the extent HMIT seeks to bring a double derivative action on behalf of the Trust based on claims purportedly held by its wholly owned subsidiary, HCMLP, HMIT lacks standing. Because HMIT lacks derivative standing to bring claims on behalf of the parent Trust, it also lacks standing to bring a double derivative action. (*See supra* Section I.A.)

111. The Trust also lacks standing to bring these claims on behalf of HCMLP. The Claimant Trust received limited partnership interests in Highland on August 11, 2021, the Effective Date of the Plan. (*See supra* ¶ 79.) HMIT challenges trades that occurred in April and August 2021 (Compl. ¶ 41 & n.12), which predate the Effective Date of the Plan. Because the Trust did not hold limited partnership interests “[a]t the time of the transaction of which the plaintiff complains,” 6 Del. C. § 17-1002, it cannot bring a derivative action based on these trades, and HMIT lacks standing to bring a double derivative action.

**II. HMIT Lacks Standing To Bring Derivative Claims Under Federal Bankruptcy Law.**

112. HMIT ignores its inability to proceed derivatively under Delaware law and instead insists it has derivative standing as a matter of federal bankruptcy law. (Mot. ¶¶ 9–14.) HMIT also

lacks derivative standing under federal bankruptcy law because (i) HMIT's lack of standing under Delaware law is dispositive regardless of forum, and (ii) HMIT, in any event, cannot meet the requirements for suing on behalf of a debtor under the federal bankruptcy case law it cites.

**A. Federal Law Does Not Confer Standing Prohibited By Delaware Law.**

113. HMIT's invocation of federal bankruptcy law cannot remedy HMIT's lack of derivative standing under Delaware law. HMIT cites Fed. R. Civ. P. 23.1, which "applies to this proceeding pursuant to" Fed. R. Bankr. P. 7023.1. (Mot. ¶ 10.) But Rule 23.1 "speaks only to the adequacy of the . . . pleadings," and "cannot be understood to 'abridge, enlarge, or modify any substantive right.'" *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991) (quoting 28 U.S.C. § 2072(b)). Thus, the question of whether HMIT has a right to proceed derivatively is governed not by Rule 23.1, but by the "source and content of the substantive law" governing the requirements for derivative actions, which is Delaware law. *Id.* at 96–97.

114. HMIT's own authority (*see* Mot. ¶¶ 12–13) further supports that Delaware law governs the standing analysis and precludes HMIT's suit. *Louisiana World Exposition v. Federal Insurance Co.*, 858 F.2d 233 (5th Cir. 1988), on which HMIT relies, "is the leading case from the Fifth Circuit . . . articulating when a creditors committee may be permitted standing to pursue estate causes of action." *Reed v. Cooper (In re Cooper)*, 405 B.R. 801, 809 (Bankr. N.D. Tex. 2009). To the extent *Louisiana World* applies post-Effective Date,<sup>37</sup> it does not supersede state law requirements for derivative standing. Before addressing the requirements a creditors' committee must meet to sue derivatively as a matter of federal bankruptcy law (discussed below), the Fifth Circuit conducted a lengthy analysis to determine "as a threshold issue" whether the creditors'

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<sup>37</sup> *Louisiana World*, in certain circumstances, allows creditors to "file suit on behalf of a debtor-in-possession or a [bankruptcy] trustee." *La. World*, 858 F.2d at 247. HCMLP is no longer a debtor-in-possession; it has been reorganized.

committee in that case could assert its claims under Louisiana law. 858 F.2d at 236–45. The court specifically addressed whether the creditors’ committee could pursue a derivative action under Louisiana law and concluded that “there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions.” *Id.* at 243. The opposite is equally true: where state law imposes such a bar, a creditor cannot flout that prohibition because it is in bankruptcy court. *See In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (“To determine that the third party may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors’ state of incorporation or formation.”) (denying creditors’ committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act).

115. Because HMIT lacks standing to bring derivative claims under Delaware law (*see supra* Section I), it cannot satisfy the “threshold issue” to proceed derivatively, whether in state or federal court.

**B. HMIT Cannot Meet The *Louisiana World* Standard Governing Derivative Actions By Creditors In Bankruptcy.**

116. Even if Delaware law did not preclude HMIT from suing derivatively (it does), HMIT still would lack standing under federal bankruptcy law. Under Fifth Circuit precedent, a bankruptcy court may authorize a creditor to proceed derivatively only if: (i) the creditor’s claims are “colorable”; (ii) the trustee or debtor-in-possession “refused unjustifiably to pursue the claim”; and (iii) the creditor “first receive[d] leave to sue from the bankruptcy court.” *La. World*, 858 F.2d at 247; *see also, e.g., PW Enters.*, 540 F.3d at 899 (same). “These requirements ensure that derivative standing does not risk interfering with the debtor or trustee and prevents creditors from

pursuing weak claims.” *In re On-Site Fuel Serv., Inc.*, 2020 WL 3703004, at \*9 (Bankr. S.D. Miss. May 8, 2020). HMIT does not and cannot satisfy these requirements.

117. HMIT focuses solely on the first of these three requirements—asserting that its claims are “colorable.” (See Mot. ¶¶ 12–14, 38–42; Objs. ¶¶ 3–4, 7–15; Supp. Mot. ¶ 13.) Even if HMIT could satisfy the “colorable claim” requirement under *Louisiana World*, which it cannot (see *infra* Section V), it does not even try to satisfy the second requirement—that Highland “refused unjustifiably to pursue the claim”—because it cannot.

118. To assess whether a debtor’s refusal was unjustified, courts “must look to whether the interests of creditors were left unprotected as a result” by conducting a “cost-benefit analysis” that takes into account whether the potential action is “valid and profitable.” *La. World*, 858 F.2d at 253 n.20; see also *Reed*, 405 B.R. at 810 (same); *Canadian Pac.*, 66 F.3d at 1442 (“[I]f a creditor pleads facts to support the conclusion that it has a colorable claim . . . and if the bankruptcy court finds that the claim will likely benefit the estate based on a cost-benefit analysis, then the creditor has raised a rebuttable presumption that the debtor-in-possession’s failure to bring that claim is unjustified.”). This requirement is not easily met. Under HMIT’s own authority (see Mot. ¶ 40) “the real challenge for the creditor will be to persuade the bankruptcy court that the trustee unjustifiably refuses to bring its claim.” *PW Enters.*, 540 F.3d at 900. As the Eighth Circuit explained:

To satisfy its burden, the creditor, at a minimum, must provide the bankruptcy court with *specific* reasons why it believes the trustee’s refusal is unjustified. A creditor thus does not meet its burden with a naked assertion that ‘the trustee’s refusal is unjustified.’ . . . The creditor, *not the bankruptcy court*, has the onus of establishing the trustee unjustifiably refuses to bring the creditor’s claim.

*Id.* (emphasis in original).

119. In conducting the “cost/benefit” analysis required to determine if a debtor’s refusal to sue is unjustified, courts consider (i) the probability of success on the claims and the financial recovery to the estate, (ii) the proposed cost of the litigation, and (iii) the delay and expense of bringing the litigation. *PW Enters.*, 540 F.3d at 901; *see also Official Comm.*, 225 B.R. at 282 (“The mandated cost/benefit analysis involves the weighing of the probability of success and financial recovery, whether it is preferable to appoint a trustee to bring suit instead of the creditors’ committee, and ‘the terms relative to attorneys’ fees on which suit might be brought.’”) (quoting *In re STN Enterps.*, 779 F.2d 901, 905 (2d Cir. 1985)). A creditor seeking to proceed derivatively must establish “a sufficient likelihood of success” to “justify the anticipated delay and expense to the bankruptcy estate that the initiation and continuation of litigation will likely produce.” *Official Comm.*, 225 B.R. at 282 (quoting *STN*, 779 F.2d at 906. If the creditor carries its burden, it shifts to the debtor to refute by a preponderance of the evidence. *PW Enters.*, 540 F.3 at 900 n.9; *Canadian Pac.*, 66 F.3d at 1442; *see also La. World*, 858 F.2d at 248 n.15 (noting that an “evidentiary hearing was unnecessary under the circumstances,” where the debtor-in-possession’s officers and directors “neither refuted any of the Committee’s claims nor objected to them”).

120. HMIT does not even attempt to meet its burden to establish that HCMLP or the Trust unjustifiably refused to pursue HMIT’s claims, or to present facts to enable the Court to conduct a cost-benefit analysis and conclude that HMIT’s proposed claims are “valid and profitable.” *La. World*, 858 F.2d at 253 n.20. Under HMIT’s own authority (*see* Mot. ¶¶ 39–41), courts permitted creditors to sue derivatively on behalf of debtors *only* after conducting such an evidentiary analysis. For example, in *Louisiana World*, the court found that “the Committee demonstrated”—and the debtor-in-possession did not “refute[]” or “rebut[]”—“the existence of a potential cause of action, a demand on the debtor-in-possession, a refusal or inability on the part

of the debtor-in-possession to bring suit, the possibility of a sizeable monetary recovery and, given the contingent nature of the attorney’s fee schedule, a limited cost factor.” 858 F.2d at 248 n.15.

121. Here, as discussed at length above, the evidence shows that HMIT’s “claims” are spurious, would be a waste of time, money, and effort, and have no purpose but to further Dondero’s crusade to burn Highland down, and make good on his explicit threat against Seery. (*See supra* ¶¶ 8–85.)

122. HMIT’s vague assertion that the COB has “conflicts of interest” does not excuse HMIT from having to ask HCMLP and/or the Trust to pursue HMIT’s alleged claims or from proving that any refusal to do so was “unjustified.” (Mot. ¶¶ 12–14.) In *Louisiana World*, the court conducted the cost-benefit analysis even though the directors and officers of the debtor-in-possession were conflicted. *La. World*, 858 F.2d at 234.<sup>38</sup>

**C. HMIT Lacks Standing To Bring Derivative Claims Challenging Pre-Confirmation Conduct.**

123. “When a Chapter 11 plan is confirmed,” the debtor loses “its authority to pursue claims as through it were trustee,” unless it makes a “specific and unequivocal” “reservation of claims.” *Wooley v. Haynes & Boone, L.L.P. (In re SI Restructuring, Inc.)*, 714 F.3d 860, 864 (5th Cir. 2013) (cleaned up; collecting cases). “Without an effective reservation, the debtor has no standing to pursue a claim that the estate owned before it was dissolved.” *Id.* (cleaned up).

124. HCMLP did not reserve any claims against Seery or any other Proposed Defendant. (Docket No. 1875-3.) Therefore, neither HCMLP nor the Trust has standing to bring claims against Seery based on conduct occurring before August 11, 2021, the Effective Date of the Plan. *Wooley*, 714 F.3d at 864. Because HMIT seeks to bring derivative claims on behalf of both HCMLP and

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<sup>38</sup> Moreover, HMIT did not ask the COB’s independent member to pursue its proposed “claims,” even though the independent member is empowered to make decisions on behalf of the COB if the other members are conflicted. (Trust Agmt. § 4.6(c).)

the Trust, HMIT's "standing is contingent upon" HCMLP's and the Trust's standing." *Id.* ("[A] creditor can derive standing to bring a debtor's claim only if the debtor itself could bring the claim."). HMIT therefore lacks standing to challenge any pre-confirmation conduct. Other than the "success fee" portion of Seery's compensation, every single allegation against Seery, including the alleged breaches of fiduciary duties, is based on pre-effective date conduct.<sup>39</sup>

### **III. HMIT Did Not Satisfy The Procedural Requirements To Bring A Derivative Action.**

#### **A. HMIT Failed To Include The Litigation Trust As A Party.**

125. It is settled law that "[a]n action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a); *see BCC Merch. Sols., Inc. v. Jet Pay, LLC*, 129 F. Supp. 3d 440, 450 (N.D. Tex. 2015) ("The Rule 17(a) requirement is in essence a codification of the prudential standing requirement that a litigant cannot sue in federal court to enforce the rights of third parties.") (cleaned up; collecting cases). "The real party in interest is the person with the right to sue under substantive law, and the determination whether one is the real party in interest with respect to a particular claim is based on the controlling state or federal substantive laws." *BCC*, 129 F. Supp. 3d at 453 (cleaned up; collecting cases).

126. HMIT seeks to bring a "derivative action benefitting and on behalf of the Reorganized Debtor [HCMLP] and the [] Claimant Trust." (Compl. ¶¶ 1, 11.) But the Claimant Trustee transferred to the Litigation Trust "any and all Causes of Action," with limited exceptions not relevant here. (*See supra* ¶ 89.) The Litigation Trust is therefore the "real party in interest,"

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<sup>39</sup> The movant in *Wooley* also alleged that (i) the complained-of breaches of fiduciary duty were kept "secret," (ii) the movant did not discover the claims until after confirmation, and (iii) it would therefore be inequitable to preclude its lawsuits. 714 F.3d at 865–66. The Fifth Circuit denied standing, notwithstanding later discovered "facts," because "[a]llowing [movant] to assert these claims simply because some of the underlying facts were unknown at the time the Plan was confirmed would be inconsistent with the 'nature of a bankruptcy which is designed primarily to secure prompt, effective administration and settlement of all debtor's assets and liabilities within a limited time.'" *Id.* at 866. Here, HMIT had knowledge of at least some of the "facts," including Dondero's alleged disclosure of MGM's inside information to Seery, before confirmation and did not object.

and HMIT lacks prudential standing to bring derivative claims on behalf of Highland. *See, e.g., BlackRock Allocation Target Shares: Series S Portfolio v. Wells Fargo Bank, N.A.*, 247 F. Supp. 3d 377, 414–15 (S.D.N.Y. 2017) (holding that plaintiff “lacks standing to bring a derivative claim against Defendant” because it “transferred all rights to such claim”).

127. The Litigation Trust is likewise “an indispensable party to a [beneficiary’s] derivative suit,” so HMIT cannot bring a derivative action without including the Litigation Trust. *Schwab v. Oscar (In re SII Liquidation Co.)*, 2012 WL 4327055, at \*8 (Bankr. S.D. Ohio Sept. 20, 2012) (cleaned up) (dismissing derivative action); *see also* Fed. R. Civ. P. 19(a)(1) (requiring joinder of indispensable party); Fed. R. Bankr. P. 7019; Fed. R. Civ. P. 12(b)(7) (permitting dismissal for “failure to join a party under Rule 19”); Fed. R. Bankr. P. 7012(b).

128. HMIT’s footnoted assertion that it “seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust” (Compl. ¶ 1 n.1) fails because, as discussed above, HMIT lacks standing to bring such “double derivative” claims (*see supra* Section I.C). The Litigation Trust is wholly owned by the Trust and, as matter of Delaware law, HMIT must demonstrate “parent level standing” to bring a “double derivative” claim that belongs to the Litigation Trust. *Sagarra*, 34 A.3d at 1079–81; *Lambrecht*, 3 A.3d at 282. Because HMIT lacks standing to bring a derivative claim on behalf of the Trust (*see supra* Section I.A), it also lacks standing to bring a double derivative claim.

**B. HMIT Failed To Make Any Demand To The Litigation Trustee And Fails To Plead Demand Futility With Particularity.**

129. HMIT’s failure to include the Litigation Trust as a party was no accident. The Litigation Trust is a Delaware statutory trust and wholly-owned subsidiary of the Trust. (Litigation Sub-Trust Agmt. § 1.1(e).) Even if HMIT had standing under Delaware law to bring a derivative action on behalf of the Litigation Trust, which it does not (*see supra* ¶ 128), HMIT can proceed

derivatively only “if (i) [HMIT] demanded that the [Trustee] pursue the corporate claim and [he] wrongfully refused to do so or (ii) demand is excused because the [Trustee is] incapable of making an impartial decision regarding the litigation.” *United Food & Comm. Workers Union v. Zuckerberg*, 250 A.3d 862, 876 (Del. Ch. 2020) (collecting cases). Accordingly, to allege a derivative action under Rule 23.1, which HMIT claims governs (*see* Compl. ¶ 6), HMIT must “state with particularity: (A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and (B) the reasons for not obtaining the action or not making the effort.” Fed. R. Civ. P. 23.1(b)(3); Fed. R. Bankr. P. 7023.1. HMIT failed to do so.

130. This Court approved Marc Kirschner (“Kirschner”) as Litigation Trustee. (Confirmation Order ¶ 45; *see also* Morris Dec. Ex. 44 (the “Litigation Sub-Trust Agreement”) § 1.1(r).) HMIT admits that it did not make any effort to make a pre-filing demand to Kirschner regarding this action. (Compl. ¶ 1 n.1.) Instead, HMIT asserts that “[a]ny demand on the Litigation Sub-Trust would be [] futile” because “the Litigation Trustee serves at the direction of the Oversight Board.” (*Id.* ¶ 1 n.1; Mot. ¶ 11 n.13.) This conclusory assertion does not allege a single fact casting “reasonable doubt” on Kirschner’s objectivity or showing that he was “dominate[d]” by interested parties, let alone with particularity. *Zuckerberg*, 250 A.3d at 877–91 (surveying Delaware demand futility law); (Mot. ¶ 11).<sup>40</sup> Because HMIT has not satisfied either the demand requirement or demand futility, it cannot bring a derivative action. *See, e.g., Zuckerberg*, 250 A.3d at 900–901 (granting “motion to dismiss under Rule 23.1”); *In re Six Flags Ent. Corp. Deriv. Litig.*, 2021 WL 1662466, at \*8 (N.D. Tex. Apr. 28, 2021) (dismissing derivative action with

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<sup>40</sup> As discussed *supra* note 38, HMIT also does not explain its failure to make any pre-filing demand to the independent member of the COB, who it does not allege is conflicted. (Compl. ¶ 10.)

prejudice for failure to plead demand futility under Delaware law “under Rule 23.1’s heightened standard”).

**C. HMIT Cannot “Fairly And Adequately” Represent The Interests of Claimant Trust Beneficiaries.**

131. Rule 23.1 provides that a “derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.” Fed. R. Civ. P. 23.1(a); Fed. R. Bankr. P. 7023.1. To be an adequate representative, “a plaintiff in a [] derivative action must not have ulterior motives and must not be pursuing an external personal agenda.” *Energytec, Inc. v. Proctor*, 2008 WL 4131257, at \*6 (N.D. Tex. Aug. 29, 2008) (cleaned up) (quoting *Smith v. Ayres*, 977 F.2d 946, 949 (5th Cir. 1992)). To determine adequacy, courts evaluate, *inter alia*, “economic antagonisms between representative and class,” “other litigation pending between the plaintiff and defendants,” “plaintiff’s vindictiveness towards the defendant,” and “the degree of support plaintiff was receiving from the [beneficiaries] he purported to represent.” *Id.* \*6–7 (quoting *Davis v. Comed, Inc.*, 619 F.2d 588, 593–94 (6th Cir. 1980)).

132. HMIT is an inadequate representative. HMIT is effectively controlled by Dondero, and the Plan recognizes HMIT as a Dondero Related Entity (Plan Art. I.B.110). This Court found that “Mr. Dondero and the Dondero Related Entities have harassed the Debtor,” including with “substantial, costly, and time-consuming litigation.” (Confirmation Order ¶ 77.) This Court also found that Dondero threatened to “burn down the place” if he did not get his way and that “Mr. Dondero and his related entities,” including HMIT, “will likely commence litigation against the Protected Parties,” including Seery. (*Id.* ¶ 78.) This Court has even referred to Dondero as an “antagonist” whose conduct has made this bankruptcy “contentious, protracted, and unpleasant,” and akin to a “corporate divorce.” *In re Highland Cap. Mgmt., L.P.*, 2021 WL 2326350, at \*1, \*25

(Bankr. N.D. Tex. June 7, 2021) (holding Dondero in “civil contempt of court”). The Fifth Circuit similarly recognized that Dondero and his related entities sought to “frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital’s management, threatening employees, and canceling trades between Highland Capital and its clients.” *NexPoint*, 48 F.4th at 426; *see also id.* at 427–28. Dondero’s own written threats confirm these findings: “Be careful what you do -- last warning.” (*See supra* ¶ 25.) Dondero-controlled HMIT is pursuing this derivative action for “ulterior motives” of “antagonism” and “vindictiveness,” cannot “fairly and adequately the interests” of the Claimant Trust Beneficiaries, and should be not be permitted to “bring a derivative suit on their behalf.” *Energytec*, 2008 WL 4131257, at \*6–7 (dismissing derivative action by former CEO on adequacy grounds because he sought to “revers[e] the events leading to his removal” and was in litigation with other shareholders).<sup>41</sup>

#### **IV. HMIT Has No Direct Claims Against The Highland Parties.**

133. Throughout its Motion and Complaint, HMIT makes vague references to unspecified direct claims against the Proposed Defendants. (*See, e.g.*, Motion ¶ 10 (“HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . .”); *id.* ¶ 67 (arguing that “HMIT has [d]irect [s]tanding”); Compl. ¶ 24 (“HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.”).) But “a claim is not ‘direct’ simply because it is pleaded that way.” *Schmermerhorn*, 2011 WL 111427, at \*26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at \*7 (Del. Ch. Nov. 5, 2004)). “Fifth

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<sup>41</sup> HMIT and Dondero also have a “personal economic interest” and other claimants “do not share this interest.” *Energytec*, 2008 WL 4131257, at \*7. Specifically, HMIT has asserted in another proceeding that Highland has sufficient assets “to pay class 8 and class 9 creditors 100 cents on the dollar.” (Docket No. 3662 ¶ 5.) If true, HMIT’s proposed claims will benefit only HMIT and, potentially, The Dugaboy Investment Trust (controlled by Dondero) and Mark Okada (HCMLP’s co-founder) as the holders of Class 11 interests. Proposed Defendants reserve the right to contest HMIT’s assertion.

Circuit precedent [] dictates that,” to determine whether claims are direct or derivative, “this Court look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs’ characterization.” *Id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)).

134. Under Delaware law, “whether a claim is solely derivative or may continue as a dual-natured claim ‘must turn *solely* on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?” *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original). “In addition, to prove that a claim is direct, a plaintiff ‘must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.’” *Id.* (quoting *Tooley*, 845 A.2d at 1033); *see also Schmermerhorn*, 2011 WL 111427, at \*24 (same).

135. Similarly, in the bankruptcy context, “[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate.” *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)). “In that situation, only the bankruptcy trustee has standing to pursue the claim for the estate . . . .” *Id.* “To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate.” *Id.*

136. Even if HMIT had viable claims (it does not), they would be derivative, not direct, under both Delaware law and federal bankruptcy law. HMIT argues that the Proposed Defendants’ “alleged actions devalued HMIT’s interest in the Debtor’s Estate, including, without limitation, payment of excessive compensation to Seery.” (Mot. ¶ 67.) Thus, by its own admission, any

alleged harm to HMIT “comes about only because of harm to the debtor,” so the alleged “injury is derivative.” *Meridian*, 912 F.3d at 293–94 (“The creditors’ injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties.”); *see also El Paso*, 152 A.3d at 1260–61 & n.60 (holding that claim “claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative”) (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at \*12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had “not identified any independent harm suffered by the limited partners”; “the partnership suffered all the harm at issue—it paid too much”).

137. HMIT’s reliance on *Pike v. Texas EMC Management, LLC*, 610 S.W.3d 763 (Tex. 2020), is misplaced. The fact that “a partner or other stakeholder in a business organization has **constitutional** standing to sue for an alleged loss in the value of its interest in the organization” (Mot. ¶ 67 (quoting *Pike*, 610 S.W.3d at 778) (emphasis added)) is irrelevant. As the Court explained, it is “the statutory provisions that define and limit a stakeholder’s ability to recover certain measures of damages, which protect the organization’s status as a separate and independent entity,” and therefore considered the matter under Texas partnership law. *Pike*, 610 S.W.3d at 778–79. Here, HMIT admits that both the Trust and HCMLP are governed by Delaware law, which does not recognize any direct (or derivative) claims by HMIT.

138. Even assuming, *arguendo*, that HMIT could bring direct claims (it cannot), the Highland Parties cannot be held liable for them. “Under the Delaware Statutory Trust Act, ‘a trustee, when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof’ except ‘to the extent otherwise provided’ by the trust’s governing document.”

*Athene Life & Annuity Co. v. Am. Gen. Life Ins. Co.*, 2020 WL 2521557, at \*8 (Del. Super. May 18, 2020) (quoting 12 Del C. §§ 3803(b)–(c)). The Trust Agreement likewise limits “personal liability” “to the fullest extent provided under Section 8303 of the Delaware Statutory Trust Act.” (Trust Agmt. § 8.3.) Because, as discussed above, HMIT is not a “beneficial owner” of the Claimant Trust (*see supra* Section I.A), it cannot bring direct claims against Proposed Defendants under Delaware law.

**V. HMIT’s Proposed Complaint Fails To Plausibly Allege Any Claims Against The Proposed Defendants.**

139. Because HMIT lacks standing, this Court need not reach the merits of HMIT’s proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion. HMIT fails to adequately allege its claims under any standard. HMIT’s claims are not colorable because they lack foundation, and HMIT’s “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” fail to “[c]ross the line from conceivable to plausible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

**A. HMIT Does Not Adequately Allege Any Breach Of Fiduciary Duties (Count I).**

140. HMIT alleges that Seery breached his fiduciary duties (i) “[b]y disclosing material non-public information to Stonehill and Farallon” before their purchase of certain Highland claims, and (ii) by receiving “compensation paid to him under the terms of the [Trust Agreement] since the Effective Date of the Plan in August 2021.” (Compl. ¶¶ 64–67.) Under Delaware law, which HMIT admits governs (*see* Mot. ¶ 21 n.24), “[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege ‘(1) that a fiduciary duty existed and (2) that the defendant breached that duty.’” *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at \*30 (N.D. Tex. Apr. 15,

2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at \*8 (Del. Ch. Feb. 28, 2020)). HMIT fails to plausibly allege either element.

141. **First**, HMIT’s “legal conclusion[]” that Seery “owed fiduciary duties to HMIT, as equity, and to the Debtor’s Estate” (Compl. ¶ 63) “do[es] not suffice” to plausibly allege the existence of any actionable fiduciary relationship. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders. *See Gilbert v El Paso Co.*, 1988 WL 124325, at \*9 (Del. Ch. Nov. 21, 1988) (“[D]irectors’ fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.”) *aff’d*, 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at \*11 (Del. Ch. Nov. 7, 2013) (same). Because Seery did not owe any “duty” to HMIT directly and individually, the Complaint fails to state a claim for breach of fiduciary duty to HMIT.

142. **Second**, to the extent Seery owed any fiduciary duties to HMIT or the Debtor, he did not breach them by allegedly communicating with Farallon and Stonehill. (*See* Compl. ¶ 64.) As this Court recognized, “claims trading in bankruptcy is [] pretty unregulated—it’s just kind of between the claims trader and the transferee.” (Morris Dec. Ex. 43 at 53:6–7.) In fact, this Court recognized that “for decades now, since a rule change in the last century, no court approval and order is necessary unless the transferor objects.” (Morris Dec. Ex. 6 at 20); *see also* Aaron L. Hammer & Michael A. Brandess, *Claims Trading: The Wild West of Chapter 11s*, 29 Am. Bankr. Inst. J. 61 (July/Aug. 2010) (“In 1991, Fed. R. Bankr. P. 3001(e) was amended to limit the court’s oversight on claims trading” such that “only the transferor may object to a transfer.”) (quoting Michael H. Whitaker, *Regulating Claims Trading in Chapter 11 Bankruptcies: A Proposal for Mandatory Disclosure*, 3 Cornell J.L. & Pub. Pol’y 303, 320 (1994)). Because none of the

transferors objected to the claims trades at issue, Seery's alleged actions in connection with them cannot constitute a breach of any fiduciary duties.

143. **Third**, HMIT's "conclusory allegations" and "legal conclusions" are "purely speculative, devoid of factual support," and therefore "stop[] short of the line between possibility and plausibility of entitlement to relief." *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up). As to Seery's discussions with Farallon and Stonehill, HMIT asserts that Seery "disclose[d] material non-public information to Stonehill and Farallon," and they "acted on inside information and Seery's secret assurances of great profits." (Compl. ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.) HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, or what "assurances" he made. The few facts HMIT provides contradict its own allegations. The only purportedly "material non-public information" identified is the Complaint is the MGM E-Mail Dondero sent to Seery containing "information regarding Amazon and Apple's interest in acquiring MGM." (Compl. ¶ 45.) This information was widely reported in the financial press at the time (*see supra* ¶¶ 30–37), so it cannot constitute material non-public information as a matter of law. *See, e.g., SEC v. Cuban*, 2013 WL 791405, at \*10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not "material, nonpublic information" and "'becomes public when disclosed to achieve a broad dissemination to the investing public'" (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997))). HMIT asserts that Farallon and Stonehill's purchases "made no sense" without access to "material non-public information." (Compl. ¶¶ 3, 50.) But HMIT admits that Farallon and Stonehill purchased Highland claims at discounts of 43% to 65% to their allowed amounts, so they would therefore receive at least an 18% return based on publicly available estimates in Highland's Court-approved Disclosure Statement. (*Id.* ¶¶ 3, 37, 42.)

144. As to Seery’s compensation, HMIT asserts that it was “excessive,” and speculates that compensation negotiations between Seery and the COB “were not arm’s-length.” (Compl. ¶¶ 4, 13, 54, 74.) But HMIT does not say one word about the process for negotiating and approving Seery’s compensation. Nor does HMIT allege what Seery’s compensation actually is, let alone compare it to others’ compensation to show that it is “excessive.” HMIT’s assertion that Seery’s compensation package was initially “composed of a flat monthly pay” but now “is also performance based” (*id.* ¶ 4) is wrong and contradicted by Court-approved documents. The structure of Seery’s post-effective date compensation, which includes a “Base Salary,” “success fee,” and “severance,” was fully disclosed in the Trust Agreement, which was publicly filed in advance of the Plan confirmation hearing and approved by this Court and the Fifth Circuit as part of the Plan (*see supra* ¶¶ 78–79).

145. Thus, HMIT fails to allege facts that, even if true (and they are not), support a reasonable inference that Mr. Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty. *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where “conclusory allegations” failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where “[a]lthough the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a ‘bad faith and knowing manner,’ no facts pled in the complaint buttress that accusation.”)

**B. HMIT’s Theories Of Secondary Liability Fail (Counts II and III).**

146. HMIT seeks to hold Proposed Defendants secondarily liable for Seery’s alleged breach of fiduciaries duties on an aid/abet theory (Compl. ¶¶ 69–74) and conspiracy theory of liability (*id.* ¶¶ 75–81). As a threshold matter, HMIT has not plausibly alleged any primary breach

of fiduciary duties, so it cannot pursue secondary liability for the same alleged wrongdoing. *See English v. Narang*, 2019 WL 1300855, at \*14 (Del. Ch. Mar. 20, 2019) (“As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.”) (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at \*10 (Tex. App. Jan. 25, 2022) (“[A] defendant’s liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.”) (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)).<sup>42</sup>

147. Even if HMIT could pursue secondary liability, it has not plausibly alleged any civil conspiracy. Under Texas law, “civil conspiracy is a theory of vicarious liability and not an independent tort.” *Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019). “[T]he elements of civil conspiracy [are] “(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result.” *Id.* at 141 (cleaned up).

148. HMIT has not plausibly alleged any “meeting of the minds.” HMIT asserts that “Defendants conspired with each other to unlawfully breach fiduciary duties” (Compl. ¶ 76), which is precisely the sort of “legal conclusion” the Supreme Court held is “not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66). HMIT repeats four times that Seery provided information to Farallon and Stonehill as a “as a *quid pro quo*” for “additional compensation” (Compl. ¶ 77; *see also id.* ¶¶ 4, 47, 74), but never provides

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<sup>42</sup> Because HMIT breach of fiduciary duty claim is governed by Delaware law, its aid/abet theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas); By contrast, “conspiracy is not an internal affair” or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

“nonconclusory factual allegations” in support. *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 550 U.S. at 565–66). HMIT vaguely alleges “upon information and belief” that Seery “did business with Farallon” and “served on [a] creditors committee” with Stonehill. (Compl. ¶ 48.) HMIT also asserts “[u]pon information and belief” that Farallon “conducted no due diligence but relied on Seery’s profit guarantees.” (*Id.* ¶ 40.) These allegations “upon information belief” are “wholly speculative and conclusory,” and therefore do “not satisfy the pleading requirements under Rule 8(a).” *Hargrove v. WMC Mortg. Corp.*, 2008 WL 4056292, at \*3 (S.D. Tex. Aug. 29, 2008) (citing *Twombly*, 550 U.S. at 555).

**C. HMIT Seeks Remedies That Are Not Available As A Matter Of Law (Counts IV, V, and VI).**

149. HMIT seeks a grab bag of unavailable remedies, including (1) equitable disallowance (Compl. ¶¶ 82–87), (2) unjust enrichment (*id.* ¶¶ 88–94), (3) declaratory relief (*id.* ¶¶ 95–99), (4) punitive damages (*id.* ¶¶ 100–01), and (5) equitable tolling (*id.* ¶¶ 103–08), several of which are incorrectly pleaded as causes of action. None of these remedies are available under applicable law.

150. *First*, Seery does not have any bankruptcy claims that can be subordinated or disallowed. (*Id.* ¶¶ 82–87.) In any event, the Fifth Circuit has expressly rejected equitable disallowance as remedy available under the Bankruptcy Code. *See SED Holdings, LLC v. 3 Star Props., LLC*, 2019 WL 13192236, at \*2 (S.D. Tex. Sept. 11, 2019) (“[T]he claim may only be subordinated, but not disallowed.”) (citing *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 699 (5th Cir. 1977)); *see also In re Lightsquared Inc.*, 504 B.R. 321, 339–40 (Bankr. S.D.N.Y. 2013) (“[T]he Bankruptcy Code, pursuant to section 510(c) or otherwise, does not permit equitable disallowance of claims that are otherwise allowable under section 502(b).”) (citing *Mobile Steel*, 563 F.2d at 699 n.10).

151. **Second**, under Texas law, “[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay.” *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).<sup>43</sup> Thus, “when a valid, express contract covers the subject matter of the parties’ dispute, there can be no recovery under a quasi-contract theory.” *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)). Here, Seery’s compensation is governed by express agreements (*see supra* ¶¶ 78–79), so unjust enrichment is unavailable as a theory of recovery.

152. **Third**, HMIT brings “claims for declaratory relief, but a request for declaratory relief is not an independent cause of action, [and] in the absence of any underlying viable claims such relief is unavailable.” *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at \*2 (S.D. Tex. June 7, 2016) (citing *Collins Cnty., Texas v. Homeowners Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)).

153. **Fourth**, HMIT has no basis to seek punitive damages. HMIT abandoned its fraud claim so its sole claim for primary liability is breach of fiduciary duty. As a matter of Delaware law, the “court cannot award punitive damages in [a] fiduciary duty action.” *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff’d* 682 F. App’x 24 (2d Cir. 2017).

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<sup>43</sup> Under the Plan, Texas law governs HMIT’s “claim” for unjust enrichment because it is not a “corporate governance matter.” (Plan Art. XII.M.) It also governs HMIT’s “claim” for constructive trust, which “is merely a remedy used to grant relief on the underlying cause of action.” *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

154. **Finally**, HMIT cannot invoke “the discovery rule,” “equitable tolling doctrine,” “fraudulent concealment,” or “any other applicable tolling doctrine” to toll the statute of limitations (Compl. ¶ 108), because this Court has held that that HMIT “has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court” (Docket No. 3713 at 2–3); *see also* Order at 2–3, *In re Hunter Mt. Inv. Tr.*, No. 23-10376 (5th Cir. Apr. 12, 2023) (declining to disturb this Court’s “appropriate” Order, because HMIT “approached the brink of the limitations period before seeking leave to assert its claim”).

### CONCLUSION

155. For the foregoing reasons, the Highland Parties respectfully request that this Court deny the Motion in its entirety and grant such other relief this Court deems just and proper.<sup>44</sup>

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<sup>44</sup> Denial should be *with prejudice*. HMIT “has known about the conduct underlying the desired lawsuit for well over a year” (Docket No. 3713 at 2–3) and has already filed two proposed Complaints. It should not be permitted to file a third (or more), which “would be futile.” *Marucci Sports, L.L.C. v. NCAA*, 751 F.3d 368, 378 (5th Cir. 2014) (affirming denial of leave to amend as futile) (collecting cases).

Dated: May 11, 2023

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	

**HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY MOTION FOR  
LEAVE TO FILE VERIFIED ADVERARY PROCEEDING**

Hunter Mountain Investment Trust (“HMIT”), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding (“Motion”), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. (“HCM” or “Reorganized Debtor”) and the Highland Claimant Trust against Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”), Farallon

Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”), James P. Seery, Jr. (“Seery”) and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively “Respondents” or “Proposed Defendants”).

### I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court’s “gatekeeping” orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the “Plan”).<sup>1</sup> A copy of HMIT’s proposed Verified Adversary Proceeding (“Adversary Proceeding”) is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings.<sup>2</sup>

WITHDRAWN

WITHDRAWN

WITHDRAWN

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<sup>1</sup> The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

<sup>2</sup> Unless otherwise referenced, all references to evidence involving documents filed in the Debtor’s bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by “Doc.” reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

WITHDRAWN

WITHDRAWN

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.<sup>4</sup>

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").<sup>5</sup> Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,<sup>6</sup> including a fraud upon innocent stakeholders, as well as breaches of fiduciary

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<sup>4</sup> Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

<sup>5</sup> Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

<sup>6</sup> Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.<sup>7</sup> Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.<sup>8</sup> Because this Motion is subject to the

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proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

<sup>7</sup> The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of \$23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

<sup>8</sup> HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceedings were conducted in the 191<sup>st</sup> Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. **WITHDRAWN** Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.<sup>8</sup> The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023.<sup>10</sup> Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.<sup>10</sup>

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

**WITHDRAWN**

<sup>10</sup> HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

## II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;<sup>11</sup> (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

## III. Standing

8. **HMIT**. Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

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time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

<sup>11</sup> In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,<sup>12</sup> this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

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<sup>12</sup> The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.<sup>13</sup> Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.<sup>14</sup>

12. The “classic example” of a proper derivative action is when a debtor-in-possession is “unable or unwilling to fulfill its obligations” to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT’s proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the “Estate Representative.”<sup>15</sup> Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to “monitor and oversee the administration of the Claimant Trust and the Claimant Trustee’s performance . . . .”<sup>16</sup>

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<sup>13</sup> Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

<sup>14</sup> See Footnote 8, *infra*. In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

<sup>15</sup> See Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

<sup>16</sup> *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates.

Yet, it is clear that any *appropriately designated party* also may bring derivative claims.

*In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In*

*re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re*

*Cooper*:

In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

*In re Cooper*, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that “[c]onflicts of

interest are, of course, frequently encountered in Chapter 11, where the metaphor of the

‘fox guarding the hen house’ is often apropos”); *see also In re McConnell*, 122 B.R. 41, 43-

44 (Bankr. S.D. Tex. 1989) (“[I]ndividual creditors can also act in lieu of the trustee or

debtor-in-possession . . .”). Here, the Proposed Defendants are the “*foxes guarding the hen*

*house*,” and their conflicts of interest abound.<sup>17</sup> Proceeding in a derivative capacity is

necessary, if not critical.

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<sup>17</sup> *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with “the benefit of non-public information acquired as a fiduciary” for the “dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest.”), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) (“Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.”).

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion, which is supported by objective evidence contained in historical filings in the bankruptcy proceedings, also incorporates sworn declarations. At the very least, this additional evidence satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.<sup>18</sup> This evidence also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over \$100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total \$397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

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<sup>18</sup> HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of \$365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately \$32 million in allowed claims.<sup>19</sup>

17. As of December 31, 2022, the Claimant Trust has distributed \$255,201,228.<sup>20</sup> On a *pro rata* basis, that means that innocent creditors have received approximately \$22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately \$9,627,000.

18. Muck and Jessup already have received approximately \$232.8 million on their Claims. Assuming and original investment of approximately \$160 million, this represents over \$72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.<sup>21</sup>

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

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<sup>19</sup> Doc. 3653.

<sup>20</sup> *Id.*

<sup>21</sup> Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just “guard the hen house,” but to also open the door and take what they want.<sup>22</sup> HMIT seeks a declaratory judgment of its rights, accordingly.

#### IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”). He also served as member of the Debtor’s Independent Board.<sup>23</sup> He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor’s Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).<sup>24</sup>

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<sup>22</sup> “The doctrine of ‘unclean hands’ provides that “a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy.” *Portnoy v. Cryo-Cell Int’l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

<sup>23</sup> Seery is the beneficiary of the Court’s “gatekeeping” orders and is an “exculpated” party in his capacity as an Independent Director. He is also a “Protected Party.”

<sup>24</sup> The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery’s fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims. The record is clear that Muck and Jessup *did not exist* before confirmation of the Plan in February 2021.<sup>26</sup> Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.<sup>27</sup> When they purchased the claims at issue, Muck and Jessup were *not* acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

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<sup>26</sup> WITHDRAWN Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

<sup>27</sup> See Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory “insiders” with duties owed directly to HMIT at a time when HMIT was the largest equity holder.<sup>28</sup> See *S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) (“The corporate insider is under a duty to ‘disclose or abstain’ —he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether.”). In this context, there is no credible doubt that Farallon’s and Stonehill’s dealings with Seery were *not* arms-length. Again, Farallon and Stonehill were Seery’s past business partners and close allies.<sup>29</sup> By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery’s compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.<sup>30</sup>

It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

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<sup>28</sup> Because of their “insider” status, this Court should closely scrutinize the transactions at issue.

<sup>29</sup> Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM’s bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM’s CEO and CRO.

<sup>30</sup> Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon’s and Stonehill’s identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.█ They also refused to disclose such details in response to a prior inquiry to their counsel.█ Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.█ Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, \*4 (Bankr. S.D. Tex. May 16, 2017) (Isgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, \*3 (Bankr. S.D. Tex. No. 2, 2010) (“The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate.” “In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.”) *ATP Oil*, 2017 WL 2123867 at \*4. That burden is easily satisfied here.

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## V. Background

26. As part of this Court's Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor's Committee—was appointed to the Board of Directors (the "Board") of Strand Advisors, Inc., ("Strand Advisors"), the Original Debtor's general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor's CEO and CRO.<sup>34</sup> Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor's sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor's CEO.<sup>35</sup>

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter "Claims"):<sup>36</sup>

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm
Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	<u>\$65 mm</u>	<u>\$60 mm</u>
<b>(Totals)</b>	\$270 mm	\$95 mm

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<sup>34</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>35</sup> See Doc. 1943, Order Approving Plan, p. 34.

<sup>36</sup> Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these “trades” occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.<sup>17</sup>

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor’s Estate,<sup>38</sup> while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But as reflected in the attached declarations, it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over \$160 million dollars to purchase the Claims in the absence of any publicly available information that

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<sup>38</sup> The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These “trades” become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM’s assets dropped over \$200 million from \$566 million to \$328.3 million.<sup>39</sup>
- HCM’s Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;<sup>40</sup>
  - This meant that Farallon and Stonehill invested more than \$103 million in Claims *when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.*
- In HCM’s Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%;<sup>41</sup>

30. In the third financial quarter of 2021, just over \$6 million of the projected \$205 million available to satisfy general unsecured creditors was disbursed.<sup>42</sup> No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—**\$45 million more than was ever projected.**<sup>43</sup>

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<sup>39</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>40</sup> Doc. 1875-1, Plan Supplement, p. 4.

<sup>41</sup> Doc 2949.

<sup>42</sup> Doc 3200.

<sup>43</sup> Doc 3582.

31. According to Highland Capital’s Motion for Exit Financing,<sup>44</sup> and a recent motion filed by Dugaboy Investment Trust,<sup>45</sup> there remain *substantial* assets to be monetized for the benefit of the Reorganized Debtor’s creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. [REDACTED] WITHDRAWN [REDACTED]

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.<sup>44</sup>
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.<sup>45</sup>
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.’s (“Amazon”) interest in acquiring Metro-Goldwyn-Mayer Studios Inc. (“MGM”).<sup>46</sup>

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<sup>44</sup> Doc 2229.

<sup>45</sup> Doc 3382.

■ [REDACTED] WITHDRAWN [REDACTED]

■ [REDACTED] WITHDRAWN [REDACTED]

■ [REDACTED] WITHDRAWN [REDACTED]

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.<sup>49</sup>

Farallon can offer *no credible explanation* to explain its significant investment, and its refusal to sell at any price, *except* Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks."<sup>50</sup>

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.<sup>51</sup> Upon receipt of this material non-public

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<sup>49</sup> See [REDACTED] WITHDRAWN [REDACTED] Doc. 1875-1.

<sup>50</sup> Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

<sup>51</sup> See Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor’s “restricted list,” but Seery continued to move forward with deals that involved MGM stock and notes.<sup>52</sup> Because the Original Debtor additionally held direct interests in MGM,<sup>53</sup> the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery’s allies now oversee his compensation.<sup>54</sup>

37. The Court also should be aware that the Texas States Securities Board (“TSSB”) opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

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<sup>52</sup> As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest’s interest in HCLOF for approximately \$22.5 million as part of the transaction. Approximately 19.1% of HCLOF’s assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to “to an entity to be designated by the Debtor”—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

<sup>53</sup> See Doc. 2229, Motion for Exit Financing.

<sup>54</sup> Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

## VI. Argument

### A. *HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.*

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they *appear* to have *some* merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), *aff'd* 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look *only* to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is “plausible” and could survive a motion to dismiss. *See In re America’s Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y. 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that “[t]he requirement of a ‘colorable claim’ means only that the plaintiff must have an ‘arguable claim’ and not that the plaintiff must be able to succeed on that claim.” *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court’s gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving “bad faith,” “willful misconduct,” or “fraud.” Because the face of the Adversary Complaint alleges plausible facts, HMIT’s Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting declarations and documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

*B. Fraud*

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.<sup>55</sup>

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero. ■ Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.<sup>57</sup> Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

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<sup>55</sup> However, Delaware law is substantially similar on the elements of fraud. *See Malinalis v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

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<sup>57</sup> *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.■

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory “insiders.” Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery’s involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery’s compensation

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should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

*C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties*

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);<sup>59</sup> *Louisiana World*, 858 F.2d at 245-46 (5<sup>th</sup> Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

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<sup>59</sup> The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment.'" 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade “any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party.”<sup>60</sup> It now appears these representations were false when made. Seery’s alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became “temporary insiders” and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5<sup>th</sup> Cir. 2010) (“[E]ven

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<sup>60</sup> *See, e.g.,*

[https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=777026](https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026).

an individual who does not qualify as a traditional insider may become a ‘temporary insider’ if by entering ‘into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes.” *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who “became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization”; *vacated in part as a condition of settlement only*);<sup>61</sup> *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) (“[a]n insider is an entity or person with ‘a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm’s length with the debtor.’ ‘Thus, the term “insider” is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm’s length.” (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

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<sup>61</sup> Although the *Washington Mutual* case was subsequently vacated, the Court’s intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court’s logic was flawed or changed, and the court expressly noted that the parties’ settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, \*8 (Bankr. D. Del. Feb. 24, 2012) (“grant[ing] partial vacatur . . . in furtherance of the settlement embodied in the Plan,” and noting that “absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement.” (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain.*" Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

*D. Equitable Disallowance is an Appropriate Remedy*

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,<sup>62</sup> the Fifth Circuit **did not foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5<sup>th</sup> Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton* . . . and is not intended to limit the court's power in any way. . . . Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances." *In re Adelpia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelpia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).<sup>63</sup>

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

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<sup>62</sup> Equitable subordination is an inadequate remedy in this instance.

<sup>63</sup> In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, \*8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . in furtherance of the settlement embodied in the Plan," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors “are fully protected by subordination” and “[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it.” *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor’s CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. See *Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit’s decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure “at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes.” *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

#### ***E. Disgorgement and Unjust Enrichment***

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).<sup>64</sup>

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14<sup>th</sup> Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. See *Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

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<sup>64</sup> It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

*F. Declaratory Relief*

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

*G. HMIT has Direct Standing.*

67. The Texas Supreme Court recently held that “a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization.” *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional “incantation that a shareholder may not sue for the corporation’s injury” is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5<sup>th</sup> Circuit and “[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation”). Because Seery, Muck, Jessup, Stonehill, Farallon’s alleged actions devalued HMIT’s interest in the Debtor’s Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

## VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,  
**PARSONS MCENTIRE MCCLEARY  
PLLC**

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**CERTIFICATE OF CONFERENCE**

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

**CERTIFICATE OF SERVICE**

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

**Exhibit 1 to Emergency Motion**

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*Attorneys for Hunter Mountain Investment Trust*

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

	§	
<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	
	§	<b>Case No. 19-34054-sgj11</b>
<b>Debtor.</b>	§	
	§	
<b>HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR</b>	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST</b>	§	<b>Adversary Proceeding No. _____</b>
<b>PLAINTIFFS,</b>	§	

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v. §  
§  
§  
MUCK HOLDINGS, LLC, JESSUP §  
HOLDINGS, LLC, FARALLON §  
CAPITAL MANAGEMENT, LLC, §  
STONEHILL CAPITAL §  
MANAGEMENT, LLC, JAMES P. §  
SEERY, JR., AND JOHN DOE §  
DEFENDANTS NOS. 1-10

DEFENDANTS.

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**VERIFIED ADVERSARY COMPLAINT**

Hunter Mountain Investment Trust ("HMIT") files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. ("HCM" or "Reorganized Debtor") and the Highland Claimant Trust (collectively "Plaintiffs"), complaining of Muck Holdings, LLC ("Muck"), Jessup Holdings, LLC ("Jessup"), Farallon Capital Management, LLC ("Farallon"), Stonehill Capital Management, LLC ("Stonehill"), James P. Seery, Jr., ("Seery") and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively "Defendants"), and would show:

**I. Introduction**

1. HMIT brings this Verified Adversary Complaint ("Complaint") on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust (“Claimant Trust”), as defined in the Claimant Trust Agreement (Doc. 3521-5) (“CTA”).<sup>1</sup> This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the “Debtor’s Estate”) were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the “Plan”) and as defined in the CTA. These assets include all “causes of action” that the Debtor’s Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

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<sup>1</sup> Solely in the alternative, and in the unlikely event HMIT’s proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be “Estate Claims” as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM’s bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT’s Emergency Motion for Leave (Doc. \_\_\_).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

## **II. Jurisdiction and Venue**

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a “related to” proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

### **III. Parties**

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants’ wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor’s bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13<sup>th</sup> Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

#### IV. Facts

##### A. *Procedural Background*

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,<sup>2</sup> which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.<sup>3</sup>

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

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<sup>2</sup> Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

<sup>3</sup> Doc. 1.

*Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (“Governance Motion”).<sup>4</sup> On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.<sup>5</sup>

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the “Board”) of Strand, the Original Debtor’s general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.<sup>6</sup> Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.<sup>7</sup>

**B. *The Targeted Claims***

27. In his capacity as the Original Debtor’s CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the “Settling Parties”), resulting in the following allowed Claims:

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm

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<sup>4</sup> Doc. 281.

<sup>5</sup> Doc. 339.

<sup>6</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>7</sup> See Doc. 1943, Order Approving Plan, p. 34.

Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	<u>\$65 mm</u>	<u>\$60 mm</u>
<b>(Totals)</b>	\$270 mm	\$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these “trades” took place within just a few weeks before the Plan’s Effective Date.<sup>8</sup> All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor’s bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

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<sup>8</sup> Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated \$160 million to acquire the Claims with a face amount of \$365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the *only* publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

- a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over \$200 million from \$566 million to \$364 million.<sup>9</sup>
- b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.<sup>10</sup>
  - o This meant that Farallon and Stonehill invested more than \$163 million in Claims when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.
- c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

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<sup>9</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>10</sup> Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the “Claims”) in April and August of 2021 in the combined amount of \$163 million.<sup>11</sup>

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee’s claim for \$78 million.<sup>12</sup> Upon information and belief, the \$23 million Acis claim<sup>13</sup> was sold to Farallon/Muck for \$8 million. Upon information and belief, HarbourVest sold its combined \$80 million in claims to Farallon/Muck for \$27 million. UBS sold its combined \$125 million in claims for \$50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, *the total projected payout was only \$35 million*. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor’s Estate projected a zero dollar return on all such Claims.

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<sup>11</sup> Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

<sup>12</sup> July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

<sup>13</sup> Seery/HCM have argued that \$10 million of the Acis claim is self-funding.

**C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.***

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").<sup>14</sup>

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.<sup>15</sup> Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.<sup>16</sup> Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor" — *i.e.*, one that was not subject to typical bankruptcy reporting requirements.<sup>17</sup>

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<sup>14</sup> See Doc. 2229, p. 6.

<sup>15</sup> See Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

<sup>16</sup> Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

<sup>17</sup> Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers<sup>18</sup> where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,<sup>19</sup> which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee<sup>20</sup> and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

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<sup>18</sup> Seery Resume [Doc. 281-2].

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

<sup>20</sup> Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

**D. Distributions**

41. The MGM sale was ultimately consummated in March 2022 for \$6.1 billion in cash, plus \$2.5 billion in debt that Amazon assumed and immediately repaid.<sup>21</sup>

42. By the end of Q3 2021, just over \$6 million of the projected \$205 million available for general unsecured claimants had been disbursed.<sup>22</sup> No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—\$45 million more than was *ever* projected.<sup>23</sup> Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed \$255,201,228. On a pro rata basis, that means that innocent creditors have received approximately \$22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately \$9,627,000.

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<sup>21</sup> Amazon Q1 2022 10-Q.

<sup>22</sup> Doc. 3200.

<sup>23</sup> Doc. 3582.

44. Muck and Jessup already have received approximately \$232.8 million on their Claims. Assuming and original investment of approximately \$160 million, this represents over \$72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

## **V. Causes of Action**

### ***A. Count I (against Seery): Breach of Fiduciary Duty***

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

**B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty**

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

*C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure*

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

***D. Count IV (against all Defendants): Conspiracy***

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

*E. Count V (against Muck and Jessup): Equitable Disallowance*

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

***F. Count VI (against all Defendants): Unjust Enrichment and Constructive Trust***

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

***F. Count VI (Against all Defendants): Declaratory Relief***

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that “a proceeding to recover property or money,” may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

- a. There is a ripe controversy concerning HMIT’s rights and entitlements under the Claimant Trust Agreement;
- b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;
- c. HMIT’s status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;
- d. HMIT’s status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT’s status as a Claimant Trust Beneficiary is fully vested when all of Muck’s and Jessup’s trust interests are subordinated to the trust interests held by HMIT;
- e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery’s fraudulent conduct, bad faith, willful misconduct and unclean hands;

- f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;
- g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

### **VI. Punitive Damages**

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

### **VII. Prayer**

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);
2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;
3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;
4. Imposition of a constructive trust;

5. Declaratory relief as described herein;
6. An award of actual damages as described herein;
7. An award of exemplary damages as allowed by law;
8. Pre- and post-judgment interest; and,
9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/\_\_\_\_\_

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter  
Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

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**APPELLANT RECORD**

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

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

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

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

**APPELLANTS' STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL – Page 1**

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

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

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

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

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

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj 11.

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 4**

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

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*Vol. 6  
001551*

*001566*

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*001640*

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*Vol. 7*

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*001843*

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 5**

DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	

**HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY MOTION FOR  
LEAVE TO FILE VERIFIED ADVERARY PROCEEDING**

Hunter Mountain Investment Trust (“HMIT”), Movant, files this Emergency Motion for Leave to File Verified Adversary Proceeding (“Motion”), both in its individual capacity and as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management, L.P. (“HCM” or “Reorganized Debtor”) and the Highland Claimant Trust against Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”), Farallon

Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”), James P. Seery, Jr. (“Seery”) and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendant Nos. 11-10 are collectively “Respondents” or “Proposed Defendants”).

### I. Good Cause for Expedited Relief

1. HMIT seeks leave to file an Adversary Proceeding pursuant to the Court’s “gatekeeping” orders, as well as the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Doc. 1943), as modified (the “Plan”).<sup>1</sup> A copy of HMIT’s proposed Verified Adversary Proceeding (“Adversary Proceeding”) is attached as Exhibit 1 to this Motion. This Motion is separately supported by objective evidence derived from historical filings in the bankruptcy proceedings.<sup>2</sup>

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<sup>1</sup> The exculpation provisions were recently modified by a decision of the Fifth Circuit. Such provisions apply to James P. Seery, Jr. only and are limited to his capacity as an Independent Director. *Matter of Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

<sup>2</sup> Unless otherwise referenced, all references to evidence involving documents filed in the Debtor’s bankruptcy proceedings (Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)) are cited by “Doc.” reference. HMIT asks the Court to take judicial notice of the documents identified by such entries.

WITHDRAWN

WITHDRAWN

2. The expedited nature of this Motion is permitted under Fed. R. Bank P. 9006 (c)(1), which authorizes a shortened time for a response and hearing for good cause. For the reasons set forth herein, HMIT has shown good cause and requests that the Court schedule a hearing on this Motion on three (3) days' notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing.<sup>4</sup>

3. HMIT brings this Motion on behalf of itself and derivatively on behalf of the Reorganized Debtor and the Highland Claimant Trust ("Claimant Trust"), as defined in the Claimant Trust Agreement (Doc. 3521-5) ("CTA").<sup>5</sup> Upon the Plan's Effective Date, Highland Capital Management, LP, as the original Debtor ("Original Debtor"), transferred its assets, including its causes of action, to the Claimant Trust, including the causes of action set forth in the attached Adversary Proceeding. The attached Adversary Proceeding alleges claims which are substantially more than "colorable" based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud,<sup>6</sup> including a fraud upon innocent stakeholders, as well as breaches of fiduciary

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<sup>4</sup> Expedited action on this Motion is also warranted to hasten Movants' opportunity to file suit, pursue prompt relevant discovery, and reduce the threat of loss of potentially key evidence. Upon information and belief, Seery has been deleting text messages on his personal iPhone via a rolling, automatic deletion setting.

<sup>5</sup> Solely in the alternative, and in the unlikely event HMIT's proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be "Estate Claims" as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM's bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate.

<sup>6</sup> Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the

duties and knowing participation in (or aiding and abetting) breaches of fiduciary duty. The Adversary Proceeding also alleges that the Proposed Defendants did so collectively by falsely representing the value of the Debtor's Estate, failing to timely disclose accurate values of the Debtor's Estate, and trading on material non-public information regarding such values. HMIT also alleges that the Proposed Defendants colluded to manipulate the Debtor's Estate—providing Seery the opportunity to plant close business allies into positions of control to approve Seery's compensation demands following the Effective Date.

4. Emergency relief is needed because of a fast-approaching date (April 16, 2023) that one or more of the Proposed Defendants *may* argue, depending upon choice of law, constitutes the expiration of the statute of limitations concerning some of the common law claims available to the Claimant Trust, as well as to HMIT.<sup>7</sup> Although HMIT offered to enter tolling agreements from each of the Proposed Defendants, they either rejected HMIT's requests or have not confirmed their willingness to do so, thereby necessitating the expedited nature of this Motion.<sup>8</sup> Because this Motion is subject to the

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proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.

<sup>7</sup> The first insider trade at issue involved the sale and transfer of Claim 23 in the amount of \$23 million held by ACMLD Claim, LLC to Muck on April 16, 2021 (Doc. 2215).

<sup>8</sup> HMIT has been diligent in its efforts to investigate the claims described in this Motion, including the filing of a Tex. R. Civ. P. Rule 202 proceeding in January 2023, which was not adjudicated until recently in March 2023. Those proceedings were conducted in the 191<sup>st</sup> Judicial District Court in Dallas County, Texas, under Cause DC-23-01004. **WITHDRAWN** Farallon and Stonehill defended those proceedings by aggressively arguing, in significant part, that the discovery issues were better undertaken in this Court.<sup>8</sup> The Rule 202 Petition was recently dismissed (**necessarily without prejudice**)

Court's "gatekeeping" orders and the injunction provisions of the Plan, emergency leave is required.

5. This Motion will come as no surprise to the Proposed Defendants. Farallon and Stonehill were involved in recent pre-suit discovery proceedings under Rule 202 of the Texas Rules of Civil Procedure relating to the same insider trading allegations described in this Motion. Muck and Jessup, special purpose entities created and ostensibly controlled by Farallon and Stonehill, respectively, also were provided notice of these Rule 202 Proceedings in February 2023.<sup>10</sup> Like this Motion, the Rule 202 Proceedings focused on Muck, Jessup, Farallon, and Stonehill and their wrongful purchase of large, allowed claims in the Original Debtor's bankruptcy based upon material non-public information. Seery is also aware of these insider trading allegations because of a prior written demand.

6. In light of the Proposed Defendants' apparent refusal to enter tolling agreements, or their failure to fully affirm their willingness to do so, HMIT is forced to seek emergency relief from this Court to proceed timely with the proposed Adversary Proceeding before the expiration of any *arguable* limitations period.<sup>10</sup>

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on March 8, 2023, ostensibly based on such arguments. However, it is telling that Stonehill and Farallon admitted during the Rule 202 Proceedings to their "affiliation" with Muck and Jessup and that they bought the Claims through these entities.

**WITHDRAWN**

<sup>10</sup> HMIT respectfully requests that this Motion be addressed and decided on an expedited basis that provides HMIT sufficient time to bring the proposed action timely. In the event the Court denies the requested relief, HMIT respectfully requests prompt notice of the Court's ruling to allow HMIT sufficient

## II. Summary of Claims

7. HMIT requests leave to commence the proposed Adversary Proceeding, attached as Exhibit 1, seeking redress for breaches of duty owed to HMIT, breaches of duties owed to the Original Debtor's Estate, aiding and abetting breaches of those fiduciary duties, conspiracy, unjust enrichment, and fraud. HMIT also alleges several viable remedies, including (i) imposition of a constructive trust; (ii) equitable disallowance of any unpaid balance on the claims at issue;<sup>11</sup> (iii) disgorgement of ill-gotten profits (received by Farallon, Stonehill, Muck and Jessup) to be restituted to the Claimant Trust; (iv) disgorgement of ill-gotten compensation (received by Seery) to be restituted to the Claimant Trust; (v) declaratory judgment relief; (vi) actual damages; and (vii) punitive damages.

## III. Standing

8. HMIT. Prior to the Plan's Effective Date, HMIT was the largest equity holder in the Original Debtor and held a 99.5% limited partnership interest. HMIT currently holds a Class 10 Claim as a contingent Claimant Trust Interest under the CTA

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time to seek, if necessary, appropriate relief in the United States District Court. In order to have a fair opportunity to seek such relief on a timely basis and protect HMIT's rights and the rights of the Reorganized Debtor, HMIT will need to seek such relief on or before Wednesday, April 5, 2023, if this Motion has not been resolved.

<sup>11</sup> In the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

(Doc. 3521-5). Upon information and belief, all conditions precedent to HMIT's certification as a vested Claimant Trust Beneficiary would be readily satisfied but for the Defendants' wrongful actions and conduct described in this Motion and the attached Adversary Proceeding.

9. **Reorganized Debtor.** Although HMIT has standing as a former Class B/C Equity Holder, Class 10 claimant, and now contingent Claimant Trust Interest under the CTA,<sup>12</sup> this Motion separately seeks authorization to prosecute the Adversary Proceeding derivatively on behalf of the Reorganized Debtor and Claimant Trust. All conditions precedent to bringing a derivative action are satisfied.

10. Fed. R. Civ. P. 23.1 provides the procedural steps for "derivative actions," and applies to this proceeding pursuant to Fed. R. Bank. P. 7023.1. Applying Rule 7023.1, the Proposed Defendants' wrongful conduct occurred, and the improper trades consummated, in the spring and early summer of 2021, before the Effective Date in August 2021. During this period, HMIT was the 99.5% Class B/C limited partner in the original Debtor. As such, HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time, and the other Proposed Defendants aided and abetted breaches of those duties at that time.

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<sup>12</sup> The last transaction at issue involved Claim 190, the Notice for which was filed on August 9, 2021. (Doc. 2698).

11. The derivative nature of this proceeding is also appropriate because any demand on Seery would be futile.<sup>13</sup> Seery is the Claimant Trustee under the terms of the CTA. Furthermore, any demand on the Oversight Board to prosecute these claims would be equally futile because Muck and Jessup, both of whom are Proposed Defendants, dominate the Oversight Board.<sup>14</sup>

12. The “classic example” of a proper derivative action is when a debtor-in-possession is “unable or unwilling to fulfill its obligations” to prosecute an otherwise colorable claim where a conflict of interest exists. *Cooper*, 405 B.R. at 815 (quoting *Louisiana World*, 858 F.2d at 252). Here, because HMIT’s proposed Adversary Proceeding includes claims against Seery, Muck, and Jessup, the conflicts of interest are undeniable. Seery is the Trustee of the Claimant Trust Assets under the CTA, and he also serves as the “Estate Representative.”<sup>15</sup> Muck and Jessup, as successors to Acis, the Redeemer Committee and UBS, effectively control the Oversight Board, with the responsibility to “monitor and oversee the administration of the Claimant Trust and the Claimant Trustee’s performance . . . .”<sup>16</sup>

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<sup>13</sup> Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed herein, since the Litigation Trustee serves at the direction of the Oversight Board.

<sup>14</sup> See Footnote 8, *infra*. In December 2021, several stakeholders made a demand on the Debtor through James Seery, in his capacity as Trustee to the Claimant Trust, to pursue claims related to these insider trades.

<sup>15</sup> See Claimant Trust Agreement (Doc. 3521-5), Sec. 3.11.

<sup>16</sup> *Id.* at Sec. 4.2(a) and (b).

13. Creditors' committees frequently bring suit on behalf of bankruptcy estates.

Yet, it is clear that any *appropriately designated party* also may bring derivative claims.

*In re Reserve Prod., Inc.*, 232 B.R. 899, 902 (Bankr. E.D. Tex. 1999) (citations omitted); *see In*

*re Enron Corp.*, 319 B.R. 128, 131 (Bankr. S.D. Tex. 2004). As this Court has held in *In Re*

*Cooper*:

In Chapter 11 [cases], there is both a textual basis . . . and, frequently, a non-textual, equitable rationale for granting a creditor or creditors committee derivative standing to pursue estate actions (*i.e.*, the equitable rationale coming into play when the debtor-in-possession has a conflict of interest in pursuing an action, such as in the situation of an insider-defendant).

*In re Cooper*, 405 B.R. 801, 803 (Bankr. N.D. Tex. 2009) (also noting that “[c]onflicts of

interest are, of course, frequently encountered in Chapter 11, where the metaphor of the

‘fox guarding the hen house’ is often apropos”); *see also In re McConnell*, 122 B.R. 41, 43-

44 (Bankr. S.D. Tex. 1989) (“[I]ndividual creditors can also act in lieu of the trustee or

debtor-in-possession . . .”). Here, the Proposed Defendants are the “*foxes guarding the hen*

*house*,” and their conflicts of interest abound.<sup>17</sup> Proceeding in a derivative capacity is

necessary, if not critical.

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<sup>17</sup> *See Citicorp Venture Cap., Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 987 (3d Cir. 1998) (settlement noteholders purchased Debtors' securities with “the benefit of non-public information acquired as a fiduciary” for the “dual purpose of making a profit and influenc[ing] the reorganization in [their] own self-interest.”), *see also, Wolf v. Weinstein*, 372 U.S. 633, 642, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) (“Access to inside information or strategic position in a corporate reorganization renders the temptation to profit by trading in the Debtor's stock particularly pernicious.”).

14. The proposed Adversary Proceeding also sets forth claims that readily satisfy the Court's threshold standards requiring "colorable" claims, as well as the requirements for a derivative action. This Motion <sup>WITHDRAWN</sup> is supported by <sup>WITHDRAWN</sup> <sup>WITHDRAWN</sup> historical filings in the bankruptcy proceedings <sup>WITHDRAWN</sup> <sup>WITHDRAWN</sup>. At the very least, this <sup>WITHDRAWN</sup> satisfies the Court's threshold requirements of willful misconduct and fraud set forth in the "gatekeeping" orders, as well as the injunction and exculpation provisions in the Plan.<sup>18</sup> This <sup>WITHDRAWN</sup> also supports well-pleaded allegations exempted from the scope of the releases included in the Plan.

15. HMIT is an appropriate party to bring this action on behalf of the Reorganized Debtor and the Claimant Trust. If successful, the Adversary Proceeding will likely recover well over \$100 million for the Claimant Trust, thereby enabling the Reorganized Debtor and Claimant Trust to pay off any remaining innocent creditors and make significant distributions to HMIT as a vested Claimant Trust Beneficiary.

16. As of December 31, 2022, the Claimant Trust had distributed 64.2% of the total \$397,485,568 par value of all Class 8 and Class 9 unsecured creditor claims. The

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<sup>18</sup> HMIT recognizes that it is an "Enjoined Party" under the Plan. The Plan requires a showing, *inter alia*, of bad faith, willful misconduct, or fraud against a "Protected Party." Seery is a "Protected Party" and an "Exculpated Party" in his capacity as an Independent Director. Muck and Jessup *may* be "Protected Parties" as members of the Oversight Committee, but they were not "protected" when they purchased the Claims before the Effective Date. While it is HMIT's position that Farallon and Stonehill do not qualify as "Protected Parties," they are included in this Motion in the interest of judicial economy.

Claims acquired by Muck and Jessup have an allowed par value of \$365,000,000. Based on these numbers, the innocent unsecured creditors hold approximately \$32 million in allowed claims.<sup>19</sup>

17. As of December 31, 2022, the Claimant Trust has distributed \$255,201,228.<sup>20</sup> On a *pro rata* basis, that means that innocent creditors have received approximately \$22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately \$9,627,000.

18. Muck and Jessup already have received approximately \$232.8 million on their Claims. Assuming and original investment of approximately \$160 million, this represents over \$72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary. The benefits to the Reorganized Debtor, the Claimant Trust and innocent stakeholders are undeniable.<sup>21</sup>

19. Seery and the Oversight Board should be estopped from challenging HMIT's status to bring this derivative action on behalf of the Claimant Trust. Seery, Muck and Jessup have committed fraud, acted in bad faith and have unclean hands, and they should not be allowed to undermine the proposed Adversary Proceeding - which seeks

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<sup>19</sup> Doc. 3653.

<sup>20</sup> *Id.*

<sup>21</sup> Further, under the present circumstances and time constraints, this Motion should be granted to avoid the prospect of the loss of some of HMIT's and the Claimant Trust's claims and denial of due process.

to rectify significant wrongdoing. To hold otherwise would allow Seery, Muck, Jessup, Stonehill, and Farallon the opportunity to not just “guard the hen house,” but to also open the door and take what they want.<sup>22</sup> HMIT seeks a declaratory judgment of its rights, accordingly.

#### IV. The Proposed Defendants

20. Seery acted in several capacities during relevant times. He served as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”). He also served as member of the Debtor’s Independent Board.<sup>23</sup> He currently serves as Claimant Trustee under the CTA and remains the CEO of the Reorganized Debtor.

21. There is no doubt Seery owed the Original Debtor’s Estate, as well as equity, fiduciary duties, including the duty of loyalty and the duty to avoid conflicts of interest. *See In re Xtreme Power Inc.*, 563 B.R. 614, 632-33 (Bankr. W.D. Tex. 2016) (detailing fiduciary duties owed by corporate officers and directors under Delaware law); *Louisiana World*, 858 F.2d at 245-46 (detailing duties owed by debtors-in-possession).<sup>24</sup>

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<sup>22</sup> “The doctrine of ‘unclean hands’ provides that “a litigant who engages in reprehensible conduct in relation to the matter in controversy ... forfeits his right to have the court hear his claim, regardless of its merit. [T]he purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit. As such it is not a matter of defense to be applied on behalf of a litigant; rather it is a rule of public policy.” *Portnoy v. Cryo-Cell Int’l, Inc.*, 940 A.2d 43, 80–81 (Del. Ch. 2008) (citations omitted) (internal quotations omitted for clarity).

<sup>23</sup> Seery is the beneficiary of the Court’s “gatekeeping” orders and is an “exculpated” party in his capacity as an Independent Director. He is also a “Protected Party.”

<sup>24</sup> The Internal Affairs Doctrine dictates choice of law. Here, the Debtor, Highland Capital Management, was organized under the law of Delaware. As much, Seery’s fiduciary duties and claims involving breaches of those duties will be governed by Delaware law.

22. Farallon and Stonehill are capital management companies which manage hedge funds; they are also Seery's close business allies with a long history of business ventures and close affiliation. Although they were strangers to the Original Debtor's bankruptcy on the petition date, and were not original creditors, they became entangled in this bankruptcy at Seery's invitation and encouragement—and then knowingly participated in the wrongful insider trades at issue. By doing so, Seery was able to plant friendly allies onto the Oversight Board to rubber stamp compensation demands. The proposed Adversary Proceeding alleges that Farallon and Stonehill bargained to receive handsome pay days in exchange.

23. Muck and Jessup are special purpose entities, admittedly created by Farallon and Stonehill on the eve of the alleged insider trades, and they were used as vehicles to assume ownership of the purchased claims. ■ WITHDRAWN ■ Muck and Jessup *did not exist* before confirmation of the Plan in February 2021.<sup>26</sup> Now, however, Muck and Jessup serve on the Oversight Board with immense powers under the CTA.<sup>27</sup> When they purchased the claims at issue, Muck and Jessup were *not* acting in their official capacities on the Oversight Committee and, therefore, they were not "Protected Persons" under the Plan.

■ WITHDRAWN ■

<sup>26</sup> ■ WITHDRAWN ■ Muck was created on March 9, 2021 before the Effective Date. Jessup was created on April 8, 2021, before the Effective Date.

<sup>27</sup> See Doc. 3521-5, Sec. 4(a) and 4(b).

24. By trading on the alleged material non-public information, Farallon, Stonehill, Muck, and Jessup became non-statutory “insiders” with duties owed directly to HMIT at a time when HMIT was the largest equity holder.<sup>28</sup> See *S.E.C. v. Cuban*, 620 F.3d 551, 554 (5th Cir. 2010) (“The corporate insider is under a duty to ‘disclose or abstain’ —he must tell the shareholders of his knowledge and intention to trade or abstain from trading altogether.”). In this context, there is no credible doubt that Farallon’s and Stonehill’s dealings with Seery were *not* arms-length. Again, Farallon and Stonehill were Seery’s past business partners and close allies.<sup>29</sup> By virtue of the insider trades at issue, Farallon and Stonehill acquired control (acting through Muck and Jessup) over the Original Debtor and Reorganized Debtor through Seery’s compensation agreement and awards, as well as supervisory powers over the Claimant Trust. This makes Farallon and Stonehill paradigm non-statutory insiders.

25. HMIT also seeks recovery against John Doe Defendant Nos. 1 through 10.<sup>30</sup>

It is clear Farallon and Stonehill refuse to disclose the precise details of their legal

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<sup>28</sup> Because of their “insider” status, this Court should closely scrutinize the transactions at issue.

<sup>29</sup> Farallon and Stonehill are two capital management firms (similar to HCM) with whom Seery has had substantial business relationships. Also, Seery previously served as legal counsel to Farallon. Seery also has a long-standing relationship with Stonehill. GCM Grosvenor, a global asset management firm, held four seats on the Redeemer Committee (an original member of the Unsecured Creditors Committee in HCM’s bankruptcy). Upon information and belief, GCM Grosvenor is a significant investor in Stonehill and Farallon. GCM Grosvenor, through Redeemer, also played a large part in appointing Seery as a director of Strand Advisors and approved his appointment as HCM’s CEO and CRO.

<sup>30</sup> Farallon and Stonehill consummated their trades concealing their actual involvement through Muck and Jessup as shell companies. Farallon’s and Stonehill’s identities were not discovered until much later after the fact.

relationships with Muck and Jessup. They resisted such discovery in the prior Rule 202 Proceedings in state district court.█ They also refused to disclose such details in response to a prior inquiry to their counsel.█ Furthermore, the corporate filings of both Muck and Farallon conspicuously omit the identity of their respective members or managing members.█ Accordingly, HMIT intends to prosecute claims against John Doe Defendant Nos. 1 -- 10 seeking equitable tolling pending further discovery whether Farallon and Stonehill inserted intermediate corporate layers between themselves and the special purpose entities (Muck and Jessup) they created. *See In re ATP Oil & Gas Corp.*, No. 12-36187, 2017 WL 2123867, \*4 (Bankr. S.D. Tex. May 16, 2017) (Isgur .J.); *see also In re IFS Fin. Corp.* No. 02-39553, 2010 WL 4614293, \*3 (Bankr. S.D. Tex. No. 2, 2010) (“The identity of the party concealing the fraud is immaterial, the critical factor is whether any of the parties involved concealed property of the estate.” “In either case, the trustee must demonstrate that despite exercising diligence, he could not have discovered the identity of the [unnamed] defendants prior to the expiration of the limitations period.”) *ATP Oil*, 2017 WL 2123867 at \*4. That burden is easily satisfied here.

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## V. Background

26. As part of this Court’s Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditor’s Committee—was appointed to the Board of Directors (the “Board”) of Strand Advisors, Inc., (“Strand Advisors”), the Original Debtor’s general partner. Following approval of the Governance Order, the Board then appointed Seery as the Original Debtor’s CEO and CRO.<sup>34</sup> Following the Effective Date of the Plan, Seery now serves as Trustee of the Claimant Trust (the Reorganized Debtor’s sole post-reorganization limited partner), and continues to serve as the Reorganized Debtor’s CEO.<sup>35</sup>

27. Imbued with his powers as CEO and CRO, Seery negotiated and obtained bankruptcy court approval of several settlements prior to the Effective Date, resulting in the following approximate allowed claims (hereinafter “Claims”):<sup>36</sup>

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm
Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	<u>\$65 mm</u>	<u>\$60 mm</u>
<b>(Totals)</b>	\$270 mm	\$95 mm

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<sup>34</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>35</sup> See Doc. 1943, Order Approving Plan, p. 34.

<sup>36</sup> Orders Approving Settlements [Doc. 1273, Doc. 1302, Doc. 1788, Doc. 2389].

Each of the settling parties curiously sold their Claims to Farallon or Stonehill (or their affiliated special purpose entities) shortly after they obtained court approval of their settlements. One of these “trades” occurred within just a few weeks before the Effective Date. Farallon and Stonehill coordinated and controlled the purchase of these Claims through Muck and Jessup, and they admitted in open court that Muck and Jessup were created to allow their purchase of the Claims.<sup>17</sup>

28. HMIT alleges that Seery filed (or caused to be filed) deflated, misleading projections regarding the value of the Debtor’s Estate,<sup>38</sup> while inducing unsecured creditors to discount and sell their Claims to Farallon and Stonehill. But **WITHDRAWN**

**WITHDRAWN** it is now known that Seery provided material, non-public information to Farallon. The circumstantial evidence is also clear that both Farallon and Stonehill had access to and used this non-public information in connection with their purchase decisions.

29. Farallon and Stonehill are registered investment advisors who have their own fiduciary duties to their investors, and they are acutely aware of what these duties entail. Yet, upon information and belief, they collectively invested over \$160 million dollars to purchase the Claims in the absence of any publicly available information that

**WITHDRAWN**

<sup>38</sup> The pessimistic projections were issued as part of the Plan Analysis on February 2, 2021. [Doc. 1875-1]. The Debtor projected 0% return on Class 9 claims and only 71.32% return on Class 8 Claims.

could rationally justify such investments. These “trades” become even more suspect because, at the time of confirmation, the Plan provided pessimistic projections advising stakeholders that the Claim holders would never receive full satisfaction:

- From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the valuation of HCM’s assets dropped over \$200 million from \$566 million to \$328.3 million.<sup>39</sup>
- HCM’s Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11;<sup>40</sup>
  - This meant that Farallon and Stonehill invested more than \$103 million in Claims *when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.*
- In HCM’s Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%;<sup>41</sup>

30. In the third financial quarter of 2021, just over \$6 million of the projected \$205 million available to satisfy general unsecured creditors was disbursed.<sup>42</sup> No additional distributions were made to the unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—**\$45 million more than was ever projected.**<sup>43</sup>

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<sup>39</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>40</sup> Doc. 1875-1, Plan Supplement, p. 4.

<sup>41</sup> Doc 2949.

<sup>42</sup> Doc 3200.

<sup>43</sup> Doc 3582.

31. According to Highland Capital’s Motion for Exit Financing,<sup>44</sup> and a recent motion filed by Dugaboy Investment Trust,<sup>45</sup> there remain *substantial* assets to be monetized for the benefit of the Reorganized Debtor’s creditors. Thus, upon information and belief, Stonehill and Farallon, stand to realize significant profits on their wrongful investments. In turn, Stonehill and Farallon will garner (and already have garnered) substantial fees – both base fees and performance fees – as the result of their acquiring and/or managing the Claims. Upon information and belief, HMIT also alleges that Seery has received excessive compensation and bonuses approved by Farallon (Muck) and Stonehill (Jessup) as members of the Oversight Board.

32. [REDACTED] WITHDRAWN [REDACTED]

- Farallon admitted it conducted no due diligence and relied upon Seery in making its multi-million-dollar investment decisions at issue.<sup>W1</sup>
- Farallon admitted it was unwilling to sell its stake in these Claims at any price because Seery assured Farallon that the Claims were tremendously valuable.<sup>W1</sup>
- Farallon bragged about the value of its investment referencing non-public information regarding Amazon, Inc.’s (“Amazon”) interest in acquiring Metro-Goldwyn-Mayer Studios Inc. (“MGM”).<sup>W1</sup>

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<sup>44</sup> Doc 2229.

<sup>45</sup> Doc 3382.

■ [REDACTED] WITHDRAWN [REDACTED]

■ [REDACTED] WITHDRAWN [REDACTED]

■ [REDACTED] WITHDRAWN [REDACTED]

- Farallon was unwilling to sell its stake in the newly acquired Claims even though publicly available information suggested that Farallon would lose millions of dollars on its investment.<sup>49</sup>

Farallon can offer *no credible explanation* to explain its significant investment, and its refusal to sell at any price, *except* Farallon's access to material non-public information. In essence, Seery became the guarantor of Farallon's significant investment. Farallon admitted as much in its statements to James Dondero.

33. The same holds true for Stonehill. Given the negative, publicly available information, Stonehill's multi-million-dollar investments make no rational sense unless Stonehill had access to material non-public information.

34. Fed. R. Bank. P. 2015.3 requires debtors to "file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest." However, no public reports required by Rule 2015.3 were filed. Seery testified they simply "fell through the cracks."<sup>50</sup>

35. Six days prior to the filing of the motion seeking approval of the HarbourVest Settlement, Seery acquired material non-public information regarding Amazon's interest in acquiring MGM.<sup>51</sup> Upon receipt of this material non-public

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<sup>49</sup> See [REDACTED] WITHDRAWN Doc. 1875-1.

<sup>50</sup> Doc. 1905, February 3, 2021, Hearing Transcript, 49:5-21.

<sup>51</sup> See Adversary No. 20-3190-sgj11, Doc. 150-1.

information, MGM should have been placed on the Original Debtor's "restricted list," but Seery continued to move forward with deals that involved MGM stock and notes.<sup>52</sup> Because the Original Debtor additionally held direct interests in MGM,<sup>53</sup> the value of MGM was of paramount importance to the value of the estate.

36. Armed with this and other insider information, Farallon—through Muck—proceeded to invest in the Claims and, acting through Muck, acceded to a powerful position on the Oversight Board to oversee future distributions to Muck and itself. It is no coincidence Seery invited his business allies into these bankruptcy proceedings with promises of great profits. Seery's allies now oversee his compensation.<sup>54</sup>

37. The Court also should be aware that the Texas States Securities Board ("TSSB") opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation

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<sup>52</sup> As part of the HarbourVest Settlement, Seery negotiated the purchase of HarbourVest's interest in HCLOF for approximately \$22.5 million as part of the transaction. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM. The HCLOF interest was not to be transferred to the Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor"—*i.e.*, one that was not subject to typical bankruptcy reporting requirements. Doc. 1625, p. 9, n. 5. Doc. 1625.

<sup>53</sup> See Doc. 2229, Motion for Exit Financing.

<sup>54</sup> Amazon closed on its acquisition of MGM in March 2022, but the evidence strongly suggests that agreements for the trades already had been reached - while announcement of the trades occurred strategically after the MGM news became public. Now, as a result of their wrongful conduct, Stonehill and Farallon profited significantly on their investments, and they stand to gain substantially more profits.

underscores HMIT's position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely "colorable."

## VI. Argument

### A. *HMIT has asserted Colorable Claims against Seery, Stonehill, Farallon, Muck, and Jessup.*

38. Unlike the terms "Enjoined Party," "Protected Party," or "Exculpated Party," the Plan does not define what constitutes a "colorable" claim. Nor does the Bankruptcy Code define the term. However, relevant authorities suggest that a Rule 12(b)(6) standard is an appropriate analogue.

39. The Fifth Circuit has held that a "colorable" claim standard is met if a [movant], such as HMIT, has asserted claims for relief that, on appropriate proof, would allow a recovery. A court need not and should not conduct an evidentiary hearing but must ensure that the claims do not lack any merit whatsoever. *Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 248 (5th Cir. 1988). Stated differently, the Court need not be satisfied there is an evidentiary basis for the asserted claims but instead should allow the claims if they *appear* to have *some* merit.

40. Other federal appellate courts have reached similar conclusions. For example, the Eighth Circuit holds that "creditors' claims are colorable if they would survive a motion to dismiss." *In re Racing Services, Inc.*, 540 F.3d 892, 900 (8th Cir. 2008); *accord In Re Foster*, 516 B.R. 537, 542 (B.A.P. 8th Cir. 2014), *aff'd* 602 Fed. Appx. 356 (8th Cir. 2015) (*per curiam*). The Sixth Circuit has adopted a similar test requiring that the court

look *only* to the face of the complaint to determine if claims are colorable. *In re The Gibson Group, Inc.*, 66 F.3d 1436, 1446 (6th Cir. 1995) (emphasis added).

41. Although there is a dearth of federal court authorities in Texas, other federal courts have adopted the same standard—*i.e.*, a claim is colorable if it is “plausible” and could survive a motion to dismiss. *See In re America’s Hobby Center, Inc.*, 223 B.R. 273, 282 (S.D.N.Y. 1998). In addition, in the non-bankruptcy context, the District Court for the Northern District of Texas explained that “[t]he requirement of a ‘colorable claim’ means only that the plaintiff must have an ‘arguable claim’ and not that the plaintiff must be able to succeed on that claim.” *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (Emphasis added).

42. Thus, in this instance, this Court’s gatekeeping inquiry is properly limited to whether HMIT has stated a plausible claim on the face of the proposed pleadings involving “bad faith,” “willful misconduct,” or “fraud.” Because the face of the Adversary Complaint alleges plausible facts, HMIT’s Motion is properly granted. Clearly, the attached Adversary Proceeding would survive a Rule 12(b)(6) challenge. Furthermore, the supporting **WITHDRAWN** documentary evidence provide additional support, and the circumstantial evidence proves that Farallon and Stonehill, strangers to the bankruptcy on the petition date, would not have leaped into these proceedings without undisclosed assurances of profit.

*B. Fraud*

43. As set forth in the proposed Adversary Proceeding, HMIT alleges a colorable claim for fraud—both fraud by knowing misrepresentation and fraud by omission of material fact. Here, these allegations of fraud are appropriately governed by Texas law under appropriate choice of law principals.<sup>55</sup>

44. Seery had a duty to not provide material inside information to his business allies. But, he did so. At the latest, Seery became aware of the potential sale of MGM in December 2020 when he received an email from Jim Dondero. ■ Thus, Seery knew at that time that this potential sale would likely yield significant value to the Original Debtor's Estate. Yet, the financial disclosures associated with the Plan's confirmation, which were provided only a month later, presented an entirely different outlook for both Class 8 and Class 9 unsecured creditors.<sup>57</sup> Seery knew at that time that these pessimistic disclosures were misleading, if not inaccurate.

45. There is no credible doubt Seery intended that innocent stakeholders would rely upon the pessimistic projections set forth in the Plan Analysis. Indeed, the singular purpose of the Plan Analysis was to advise stakeholders. As such, HMIT alleges that Seery knowingly made misrepresentations with the intention that innocent stakeholders

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<sup>55</sup> However, Delaware law is substantially similar on the elements of fraud. *See Malinalis v. Kramer*, No. CIV.A. CPU 6-11002145, 2012 WL 174958, at 2 (Del. Com. PI. Jan. 5, 2012)

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<sup>57</sup> *See* Doc. 1875-1, Plan Analysis, February 1, 2021.

would rely, and that he failed to disclose material information concerning his entanglements with Farallon and Stonehill, as well as the related negotiations that were chock full of conflicts of interest.

46. On the flip side of this conspiracy coin, Farallon and Stonehill were engaged in negotiations to acquire the Claims at discounted prices; and, they successfully did so. HMIT alleges that their success was based on knowledge that the financial disclosures associated with the Plan Analysis were significantly understated. Otherwise, it would make no financial sense for Farallon and Stonehill to do the deals at issue. Indeed, Farallon admitted that it would not sell the Claims at any price, expressing great confidence in the substantial profits it expected even in the absence of any supporting, publicly available information.■

47. All of the Proposed Defendants had a duty of affirmative disclosure under these circumstances. Seery always had this duty. Muck, Jessup, Farallon, and Stonehill assumed this duty when they became non-statutory “insiders.” Thus, all of the Proposed Defendants are liable for conspiring to perpetrate a fraud by omission of material facts.

48. HMIT also claims that Seery and the other Proposed Defendants failed to disclose material information concerning Seery’s involvement in brokering the Claims in exchange for *quid pro quo* assurances of enhanced compensation. Seery’s compensation

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■ WITHDRAWN

should be disgorged or, alternatively, such compensation constitutes a damage recoverable by the Reorganized Debtor and Claimant Trust as assignees (or transferees) of the Original Debtor's causes of action. This compensation was the product of the alleged self-dealing, breaches of fiduciary duty, and fraud.

*C. Breaches and Aiding and Abetting Breaches of Fiduciary Duties*

49. It is beyond dispute Seery owed fiduciary duties to the Estate. *See Xtreme Power*, 563 B.R. at 632-33 (detailing fiduciary duties owed by corporate officers and directors under Delaware law);<sup>59</sup> *Louisiana World*, 858 F.2d at 245-46 (5<sup>th</sup> Cir. 1988) (detailing duties owed by debtors-in-possession). Although Seery did not buy the Claims at issue, he stood to profit from these sales because his close business allies would do his bidding after they had acceded to positions of power and control on the Oversight Board. Muck and Jessup were essentially stepping into the shoes of three of the largest unsecured creditors who were already slated to serve on the Oversight Board. Thus, by acquiring their Claims, all of the Proposed Defendants knew that Muck and Jessup would occupy these powerful oversight positions after the Effective Date.

50. Thus, the alleged conspiracy was successfully implemented before the Effective Date. Farallon and Stonehill now occupy control positions through the shell

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<sup>59</sup> The *Xtreme* case also notes that "several Delaware courts have recognized that 'directors who are corporate employees lack independence because of their substantial interest in retaining their employment.'" 563 B.R. at 633-34. Because Muck and Jessup are now in control of Seery's compensation, it follows that Seery is beholden to them, and Seery's disclosure of inside information to Stonehill and Farallon confirms his conflict of interest.

entities (Muck and Jessup) overseeing large compensation packages for Seery. Of course, this control (and the opportunity to control) presented a patent conflict of interest which Seery should have avoided, but instead knowingly created, fostered, and encouraged. HMIT alleges that Seery breached his duty to avoid this conflict or otherwise disclose this conflict and Farallon and Stonehill aided and abetted this breach.

51. The Original Debtor, as an investment adviser registered with the SEC, is also required to make public disclosures on its Form ADV, the uniform registration form for investment advisers required by the SEC. These Form ADV disclosures, which were in effect at the time of the insider trades at issue, explicitly forbade “any access person from trading either personally or on behalf of others . . . on material non-public information or communicating material non-public information to others in violation of the law or duty owed to another party.”<sup>60</sup> It now appears these representations were false when made. Seery’s alleged conduct also violated, at minimum, the duties Seery owed in his various capacities with the Original Debtor under the Form ADV disclosures.

52. Although initially strangers to the original bankruptcy, by accepting and using inside information, Farallon and Stonehill became “temporary insiders” and thus owed separate duties to the Estate. *See S.E.C. v. Cuban*, 620 F.3d 551 (5<sup>th</sup> Cir. 2010) (“[E]ven

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<sup>60</sup> *See, e.g.,*

[https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=777026](https://files.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=777026).

an individual who does not qualify as a traditional insider may become a ‘temporary insider’ if by entering ‘into a special confidential relationship in the conduct of the business of the enterprise [they] are given access to information solely for corporate purposes.” *In re Washington Mut., Inc.*, 461 B.R. 200 (Bankr. D. Del. 2011), *vacated in part*, 08-12229 MFW, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (finding that equity committee stated colorable claim for equitable disallowance against creditors who “became temporary insiders of the Debtors when the Debtors gave them confidential information and allowed them to participate in negotiations with JPMC for the shared goal of reaching a settlement that would form the basis of a consensual plan of reorganization”; *vacated in part as a condition of settlement only*);<sup>61</sup> *See also, In re Smith*, 415 B.R. 222, 232-33 (Bankr. N.D. Tex. 2009) (“[a]n insider is an entity or person with ‘a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm’s length with the debtor.’ “Thus, the term “insider” is viewed to encompass two classes: (1) per se insiders as listed in the Code and (2) extra-statutory insiders that do not deal at arm’s length.” (citations omitted)). Farallon, Stonehill, Muck, and Jessup clearly fall into this latter category.

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<sup>61</sup> Although the *Washington Mutual* case was subsequently vacated, the Court’s intellectual reasoning remains valid because the vacatur was mandated by a mediated settlement, not because the court’s logic was flawed or changed, and the court expressly noted that the parties’ settlement was conditioned on vacatur. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, \*8 (Bankr. D. Del. Feb. 24, 2012) (“grant[ing] partial vacatur . . . in furtherance of the settlement embodied in the Plan,” and noting that “absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement.” (emphasis added)).

53. Because Farallon and Stonehill (acting through Muck and Jessup) now hold the majority of the seats on the Oversight Board, they, along with Seery, exercise control of the reorganization proceedings. At no time were Farallon, Stonehill, or Seery's plans disclosed to the other creditors or equity. In fact, the only inference that can be reasonably drawn is that Farallon and Stonehill brazenly sought to conceal their involvement by establishing shell entities—Muck and Jessup—to nominally hold the Claims and create an opaque barrier to any effort to identify the "*Oz behind the curtain.*" Such conduct aligns precisely with the inequitable conduct detailed in *Citicorp* and *Adelphia* (discussed below).

54. In sum, the proposed Adversary Proceeding sets forth plausible allegations that Stonehill and Farallon were aware of Seery's fiduciary duties. Indeed, as registered investment advisors, both Farallon and Stonehill were acutely aware of Seery's fiduciary obligations, including, without limitation, the duty to act in the best interests of the Original Debtor's Estate and the duty not to engage in insider trading that would benefit Seery, as an insider, and themselves, as non-statutory insiders. By accepting and then acting on material non-public information, Farallon and Stonehill (as well as Muck and Jessup) aided and abetted breaches of these fiduciary duties. By placing themselves in positions to control Seery's compensation, Farallon and Stonehill (acting through Muck and Jessup) induced, encouraged, aided and abetted Seery's self-dealing.

*D. Equitable Disallowance is an Appropriate Remedy*

55. HMIT also seeks equitable disallowance. Although the Fifth Circuit in *Matter of Mobile Steel Co.* generally limited the court's equitable powers to subordination rather than disallowance,<sup>62</sup> the Fifth Circuit **did not foreclose** the viability of equitable disallowance as a potential remedy. *See* 563 F.2d 692, 699 n. 10 (5<sup>th</sup> Cir. 1977). Binding U.S. Supreme Court precedent in *Pepper v. Litton* also permits bankruptcy courts to fashion disallowance remedies. 308 U.S. 295, 304-11 (1939). Bankruptcy Code § 510, which supplies the authority for equitable subordination, was "intended to codify case law, such as *Pepper v. Litton* . . . and is not intended to limit the court's power in any way. . . . Nor does [it] preclude a bankruptcy court from completely disallowing a claim in appropriate circumstances." *In re Adelpia Commun. Corp.*, 365 B.R. 24, 71-72 (Bankr. S.D.N.Y. 2007), *aff'd in part sub nom. Adelpia Recovery Tr. v. Bank of Am., N.A.*, 390 B.R. 64 (S.D.N.Y. 2008), *adhered to on reconsideration*, 05 CIV. 9050 (LMM), 2008 WL 1959542 (S.D.N.Y. May 5, 2008) (emphasis and omissions in original).<sup>63</sup>

56. The Fifth Circuit's decision in *Mobile Steel* also was premised on the notion that disallowance would not add to the quiver of defenses to fight unfairness because

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<sup>62</sup> Equitable subordination is an inadequate remedy in this instance.

<sup>63</sup> In *Washington Mutual*, the Court's intellectual reasoning when imposing disallowance is instructive. *See In re Washington Mut., Inc.*, No. 08-12229 MFW, 2012 WL 1563880, \*8 (Bankr. D. Del. Feb. 24, 2012) ("grant[ing] partial vacatur . . . in furtherance of the settlement embodied in the Plan," and noting that "absent the requested vacatur, the collapse of the Plan could result in the termination of the Global Settlement Agreement." (emphasis added)).

creditors “are fully protected by subordination” and “[i]f the misconduct directed against the bankrupt is so extreme that disallowance might appear to be warranted, then *surely* the claim is either invalid or the bankrupt possesses a clear defense against it.” *Mobile Steel*, 563 F.2d at 699 n. 10 (emphasis added). Importantly, however, the factual scenarios considered in *Mobile Steel* do not exist here.

57. Here, Muck and Jessup purchased both Class 8 and Class 9 Claims, and they now effectively occupy more than 90% of the entire field of unsecured creditors in these two claimant tiers. Thus, subordination cannot effectively address the current facts where the Original Debtor’s CEO and CRO conspired directly with close business allies who acquired the largest unsecured claims to the detriment of other innocent creditors and *former equity*. The reasoning in published cases from other circuits supports this conclusion. See *Adelphia*, 365 B.R. at 71-73; *Citicorp Venture Capital, Ltd. v. Comm. of Creditors Holding Unsecured Claims*, 160 F.3d 982, 991 n. 7 (3d Cir. 1998).

58. The purpose of equitable subordination is to assure that the wrongdoer does not profit from bad conduct. In the typical case, subordination to other creditors will achieve this deterrence. But, it is clear that the Third Circuit’s decision in *Citicorp* was structured to use subordination as just one tool in a larger tool box to make sure “at a minimum, the remedy here should deprive – [the fiduciary] of its profit on the purchase of the notes.” *Id* at 991. In *Adelphia*, the Southern District of New York also used equitable

subordination as a remedy to address wrongs of non-insiders who aided and abetted breaches a fiduciary duty by the debtor's management. 365 B.R. at 32.

59. But subordination cannot adequately address the wrongful conduct at issue. This is because subordination is typically limited to instances where one creditor is subordinated to other creditors, not equity. Here, for all practical purposes, there are only a few other unsecured creditors with relatively small stakes. Therefore, subordination as a weapon of deterrence is neutered.

60. In sum, by engaging in the alleged wrongful acts, including aiding and abetting Seery's breaches of fiduciary duty, Farallon, Stonehill, Muck, and Jessup should not be rewarded. The Proposed Defendants engaged in alleged conduct which damaged the Original Debtor's estate, including improper agreements to compensate Seery under the terms of the CTA. Equitable disallowance is an appropriate remedy which, when combined with disgorgement of all ill-gotten profits, will deprive the Proposed Defendants of their ill-gotten gains.

***E. Disgorgement and Unjust Enrichment***

61. The law is clear that disgorgement is an available remedy for breach of fiduciary duty both under Texas Law, see *Kinzbach Tool Co. v. Corbett-Wallace Corporation*, 160 S.W. 2d 509 (Tex. 1942), and under Delaware law, see *Metro Storage International, LLC v. Harron*, 275 A.3d 810 (Del. Ch. 2022). Disgorgement is also an appropriate remedy for unjust enrichment under Texas law, *Hunter v. Shell Oil Co.*, 198 F.2d 485 (5th Cir. 1952),

and under Delaware law, *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).<sup>64</sup>

62. Likewise, the imposition of a constructive trust is proper for addressing unjust enrichment under both Delaware and Texas law, see *Teacher's Retirement System of Louisiana v. Aidinoff*, 900 A.2d 654 (Del. Ch. 2006) and *Hsin-Chi-Su v. Vantage Drilling Company*, 474 S.W. 3d 384 (Tex. App. – 14<sup>th</sup> Dist. 2015), pet. denied. The elements of unjust enrichment are: (1) the defendant must have gained a benefit (2) at the expense of plaintiff, (3) and retention of that benefit must be shown to be unjust. See *Restatement (Third) of Restitution and Unjust Enrichment* §321, cmt. e (2011).

63. Here, the imposition of a constructive trust and disgorgement are clearly appropriate to provide redress for the alleged breaches of fiduciary duty and the knowing participation in (or aiding and abetting) those breaches. Furthermore, the imposition of a constructive trust and disgorgement are appropriate to disgorge the improper benefits that all of the Proposed Defendants received by virtue of collusion and insider trading.

64. As set forth in the proposed Adversary Proceeding, Seery gained the opportunity to have his compensation demands rubber stamped. The other Defendants gained the opportunity to purchase valuable claims at a discount knowing that

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<sup>64</sup> It is likely that the Internal Affairs Doctrine will dictate that Delaware choice of law governs the breach of fiduciary duty claims.

pessimistic financial projections were false and that the upside investment potential was great. Retention of the benefits they received would be unjust and inequitable.

65. Clearly, the Debtor's Estate was damaged by virtue of the claimed conduct. Seery obtained profits and compensation to the detriment of that estate as well as the estate of the Reorganized Debtor, other innocent creditors and HMIT, as former equity and as a contingent Claimant Trust Beneficiary.

#### *F. Declaratory Relief*

66. HMIT also seeks declaratory relief pursuant to Fed. R. Bank P. 7001(9). Specifically, HMIT seeks a declaratory judgment that: (a) there is a ripe controversy concerning HMIT's rights and entitlements under the Claimant Trust Agreement; (b) as a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered "contingent;" (c) HMIT's status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill; (d) HMIT's status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments; (e) Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of fraudulent conduct, bad faith, willful misconduct, and unclean hands; (f) Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized

Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct, and unclean hands; and (g) all of the Proposed Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct, and unclean hands.

*G. HMIT has Direct Standing.*

67. The Texas Supreme Court recently held that “a partner or other stakeholder in a business organization has constitutional standing to sue for an alleged loss in the value of its interest in the organization.” *Pike v. Texas EMC Mgt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). In so holding, the Court considered federal law and found that the traditional “incantation that a shareholder may not sue for the corporation’s injury” is really a question of capacity, which goes to the merits of a claim, rather than an issue of standing that would impact subject matter jurisdiction. *Id.* at 777 (noting that the 5<sup>th</sup> Circuit and “[o]ther federal circuits agree that a plaintiff has standing to sue for the lost value of its investment in a corporation”). Because Seery, Muck, Jessup, Stonehill, Farallon’s alleged actions devalued HMIT’s interest in the Debtor’s Estate, including, without limitation, payment of excessive compensation to Seery, HMIT has standing to pursue its common law claims directly. HMIT also has direct standing to seek declaratory relief as set forth in the proposed Adversary Proceeding.

## VII. Prayer

WHEREFORE, PREMISES CONSIDERED, Hunter Mountain Investment Trust respectfully requests this Court grant HMIT leave authorizing it to file the Adversary Complaint, attached as Exhibit 1, as an Adversary Proceeding in this United States Bankruptcy Court for the Northern District of Texas, in its own name and as a derivative action on behalf of the Debtor Highland Capital Management, L.P., against Muck Holdings, LLC, Jessup Holdings, LLC, Farallon Capital Management, LLC, Stonehill Capital Management, LLC, James P. Seery, Jr., and John Doe Defendants Nos. 1 – 10, and further grant HMIT all such other and further relief to which HMIT may be justly entitled.

Dated: March 28, 2023

Respectfully Submitted,  
**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/ Sawnie A. McEntire  
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*Attorneys for Hunter Mountain  
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**CERTIFICATE OF CONFERENCE**

Beginning on March 24, 2023, and also on March 27, 2023, the undersigned counsel conferred either by telephone or via email with all counsel for all Respondents regarding the relief requested in the foregoing Motion, including John A. Morris on behalf of James P. Seery, and Brent McIlwain on behalf of Muck Holdings LLC, Jessup Holdings LLC, Stonehill Capital Management, and Farallon Capital Management. Mr. Seery is opposed to this Motion. Based upon all communications with Mr. McIlwain, it is reasonably believed his clients are also opposed and we advised him that this recitation would be placed in the certificate of conference.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

**CERTIFICATE OF SERVICE**

I certify that on the 28th day of March 2023, a true and correct copy of the foregoing Motion was served on all counsel of record or, as appropriate, on the Respondents directly.

/s/ Sawnie A. McEntire

Sawnie A. McEntire

**Exhibit 1 to Emergency Motion**

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*Attorneys for Hunter Mountain Investment Trust*

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

	§	
<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	
	§	<b>Case No. 19-34054-sgj11</b>
<b>Debtor.</b>	§	
<hr/>		
<b>HUNTER MOUNTAIN INVESTMENT TRUST, INDIVIDUALLY, AND ON BEHALF OF THE DEBTOR HIGHLAND CAPITAL MANAGEMENT, L.P. AND THE HIGHLAND CLAIMANT TRUST</b>	§ § § § § § § § § §	<b>Adversary Proceeding No. _____</b>
<b>PLAINTIFFS,</b>	§	
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v. §  
 §  
 §  
 MUCK HOLDINGS, LLC, JESSUP §  
 HOLDINGS, LLC, FARALLON §  
 CAPITAL MANAGEMENT, LLC, §  
 STONEHILL CAPITAL §  
 MANAGEMENT, LLC, JAMES P. §  
 SEERY, JR., AND JOHN DOE §  
 DEFENDANTS NOS. 1-10

DEFENDANTS.

**VERIFIED ADVERSARY COMPLAINT**

Hunter Mountain Investment Trust (“HMIT”) files this Verified Adversary Complaint in its individual capacity and, as a derivative action on behalf of the Reorganized Debtor, Highland Capital Management L.P. (“HCM” or “Reorganized Debtor”) and the Highland Claimant Trust (collectively “Plaintiffs”), complaining of Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”), Farallon Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”), James P. Seery, Jr., (“Seery”) and John Doe Defendant Nos. 1-10 (Muck, Jessup, Stonehill, Farallon, Seery and the John Doe Defendants Nos. 1-10 are collectively “Defendants”), and would show:

**I. Introduction**

1. HMIT brings this Verified Adversary Complaint (“Complaint”) on behalf of itself, individually, and as a derivative action benefitting the Reorganized Debtor and

on behalf of the Highland Claimant Trust (“Claimant Trust”), as defined in the Claimant Trust Agreement (Doc. 3521-5) (“CTA”).<sup>1</sup> This derivative action is specifically brought pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and B. R. Rule 7023.1. At the time of the transactions at issue, HMIT held a 99.5% limited partnership in Highland Capital Management, LP, the Original Debtor, as described herein. This derivative action is not a collusive effort to confer jurisdiction that the Court would otherwise lack.

2. Upon the Effective Date, the assets of the bankruptcy estate of Highland Capital Management, L.P., as the Original Debtor (the “Debtor’s Estate”) were transferred to the Highland Claimant Trust under the terms of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Doc. 1943, Exhibit A] (the “Plan”) and as defined in the CTA. These assets include all “causes of action” that the Debtor’s Estate had before the Effective Date including, without limitation, the causes of action set forth in this Adversary Proceeding. Furthermore, the Claimant Trust is managed by the Claimant Trustee, Seery. Therefore, any demand upon Seery to prosecute the claims set forth in this Complaint would be futile because Seery is a Defendant. Similarly, the Oversight Board exercises supervision over Seery as Claimant

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<sup>1</sup> Solely in the alternative, and in the unlikely event HMIT’s proposed causes of actions against Seery, Stonehill, Farallon, Muck, and/or Jessup are considered to be “Estate Claims” as those terms are used and defined within the CTA and Exhibit A to the Notice of Final Term Sheet [Docket No. 354] in HCM’s bankruptcy (and without admitting the same), HMIT alternatively seeks standing to bring this action as a derivative action on behalf of the Litigation Sub-Trust as appropriate. Any demand on the Litigation Sub-Trust would be equally futile for the same reasons addressed in HMIT’s Emergency Motion for Leave (Doc. \_\_\_).

Trustee, and Muck and Jessup are members of the Oversight Board. Any demand upon Muck and Jessup to prosecute these claims would be equally futile. All conditions precedent to bringing this derivative action have otherwise been satisfied.

3. This action has become necessary because of Defendants' tortious conduct. This tortious conduct occurred before the Effective Date of the Plan, but its effects have caused damage both before and after the Effective Date. Prior to the Effective Date, HMIT owned 99.5% of the limited partnership interest in the Original Debtor and was the beneficiary of fiduciary duties owed by Seery.

4. Seery, the Original Debtor's CEO and former Chief Restructuring Officer ("CRO"), wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends, Farallon and Stonehill. He did so by providing material non-public information to them concerning the value of the Original Debtor's Estate that other stakeholders did not know. Farallon and Stonehill, who were otherwise strangers to the bankruptcy proceedings, wrongfully purchased the claims through their special purpose entities, Muck and Jessup, based upon this inside information, and they are now profiting from their misconduct. Seery's dealings with the other Defendants were not arm's length, but instead were covert, undisclosed, and collusive.

5. Motivated by corporate greed, the other Defendants aided and abetted or, alternatively, knowingly participated in Seery's wrongful conduct. They also breached their own duties as "non-statutory insiders." Because of their long-standing, historical

relationships with Seery, and their use of material non-public information, Farallon, Stonehill, Muck, and Jessup assumed positions of control over the affairs of the Debtor's bankruptcy, including compensation awards to Seery. As such, they became non-statutory insiders.

6. HMIT was formerly the largest equity holder in the Debtor, holding a 99.5% limited partnership interest. HMIT now holds an Allowed Class 10 Class B/C Limited Partnership Interest and a Contingent Trust Interest under the CTA. Given HMIT's position as former equity, HMIT's right to recover from the Claimant Trust is junior to the Reorganized Debtor's unsecured creditors, now known as Claimant Trust Beneficiaries. However, the vast majority of the approved unsecured claims superior to HMIT's interest are the claims wrongfully acquired by insider trading and the breaches of duty at issue in this proceeding.

7. By wrongfully soliciting, fostering, and encouraging the wrongful insider trades, Seery violated his fiduciary duties to the Debtor's Estate, specifically his duty of loyalty and his duty to maximize the value of the Estate with corresponding recovery by legitimate creditors and former equity. Seery was motivated out of self-interest to garner personal benefit (to the detriment of the Debtor's Estate) by strategically benefitting his business allies with non-public information. He then successfully "planted" his allies onto the Oversight Board, which, as a consequence does not act as an independent board in the exercise of its responsibilities. Rather, imbued with powers to oversee Seery's

future compensation, the other Defendants are postured to reward Seery financially regarding Defendants' illicit dealings and, upon information and belief, they have done so.

8. By receiving and acting upon material non-public information concerning the financial condition of the Debtor's Estate, Stonehill and Farallon, acting individually and through special purpose shell entities they created and controlled, directly or indirectly, are also liable for aiding and abetting Seery's breaches of fiduciary duties. By acquiring the claims at issue, Muck and Jessup, the shell entities created and controlled by Stonehill and Farallon, also became non-statutory insiders owing duties of disclosure which they also breached.

9. HMIT separately seeks recovery against John Doe Defendant Nos. 1-10. Farallon actively concealed the precise legal relationship between Farallon and Muck. Stonehill actively concealed the precise legal relationship between Stonehill and Jessup. What is known, however, is that Farallon and Stonehill created these special purpose shell entities on the eve of the insider trades to acquire ownership of the claims and to otherwise control the affairs of the Oversight Board. Both Farallon and Stonehill rejected inquiries concerning the exact nature of their relationship with these special purpose entities. Accordingly, HMIT seeks equitable tolling of any statute of limitations concerning claims against unknown business entities that Farallon and Stonehill may have created and inserted as intermediate corporate layers in the transactions at issue.

10. HMIT seeks to disgorge all Defendants' ill-gotten profits and equitable disallowance of the remaining unpaid balances on the following allowed claims: Claim Nos. 23, 72, 81, 143, 147, 149, 150, 153, 154, 190, and 191 (the "Claims") currently held by Muck and Jessup. Because Defendants received substantial distributions from the Claimant Trust in connection with these Claims, HMIT seeks to disgorge all such distributions above Defendants' initial investment—compelling restitution of such funds to the Claimant Trust for the benefit of innocent creditors and former equity pursuant to the waterfall established under the Plan and the CTA. HMIT also seeks to disgorge Seery's compensation from the date his collusive conduct first occurred. Alternatively, HMIT seeks damages on behalf of the Claimant Trust in an amount equal to all compensation paid to Seery from the onset of his collusive conduct to present.

## **II. Jurisdiction and Venue**

11. Pursuant to *Misc. Order No. 33 Order of Reference of Bankruptcy Cases, U.S. District Court for N.D. Texas* (the "Order of Reference"), this Complaint is commenced in the Bankruptcy Court because it is "related to a case under Title 11." The filing of this Complaint is expressly subject to and without waiver of Plaintiff' rights and ability to seek withdrawal of the reference pursuant to 28 U.S.C. § 157(d), FED. R. BANKR. P. 5011, and Local Bankruptcy Rule 5011-1. Plaintiffs hereby demand a right to a trial by jury of all claims asserted herein and nothing in this Complaint, nor Plaintiffs' compliance with the Order of Reference, shall be deemed a waiver of this right.

12. This Court has jurisdiction of the subject matter and the parties as a “related to” proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and Articles IX.F, and XI. of the Plan.

13. Pursuant to Rule 7008 of the Bankruptcy Rules, Plaintiffs do **not** consent to the entry of final orders or judgment by the bankruptcy court.

14. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1408 and 1409, and Articles IX.F, and XI. of the Plan.

### **III. Parties**

15. HMIT is a Delaware statutory trust that was the largest equity holder in the Original Debtor, holding a 99.5% limited partnership interest. HMIT is also the holder of a Contingent Trust Interest in the Claimant Trust, but should be treated as a vested Claimant Trust Beneficiary due to Defendants’ wrongful conduct.

16. Pursuant to the Plan and the CTA, the Claimant Trust holds the assets of the Reorganized Debtor, including the causes of action that accrued to the Original Debtor before the Effective Date. The Claimant Trust is established in accordance with the Delaware Statutory Trust Act and Treasury Regulatory Section 301.7701-4(d).

17. Muck is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Muck has made prior appearances in the Debtor’s bankruptcy.

18. Jessup is a Delaware limited liability company, with its principal office in New York, and may be served with process via its registered agent, Vcorp Services, LLC, at 108 W. 13<sup>th</sup> Street Suite 100, Wilmington, Delaware 19801. Jessup has made prior appearances in the Debtor's bankruptcy.

19. Farallon is a Delaware limited liability company, with its principal office in California, and may be served with process at One Maritime Plaza, Suite 2100, San Francisco, CA 94111. Farallon is a capital management company that manages hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Farallon because Farallon's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts requirements and due process considerations.

20. Stonehill is a Delaware limited liability company, with its principal office in New York, and may be served with process at 320 Park Avenue, 26<sup>th</sup> Floor, New York, NY 10022. Stonehill is a capital management company managing hedge funds and is a registered investment advisor. This Court has personal jurisdiction over Stonehill because Stonehill's conduct giving rise to or relating to the claims in this Adversary Proceeding occurred in Texas, thereby satisfying all minimum contacts and all due process considerations.

21. Seery is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201.

22. John Doe Defendant Nos. 1-10 are currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.

#### **IV. Facts**

##### ***A. Procedural Background***

23. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in Delaware Bankruptcy Court,<sup>2</sup> which was later transferred to the Northern District of Texas Bankruptcy Court, Dallas Division, on December 4, 2019.<sup>3</sup>

24. On October 29, 2019, the U.S. Trustee's office appointed a four-member Unsecured Creditors Committee ("UCC") consisting of three judgment creditors—the Redeemer Committee of the Highland Crusader Fund ("Redeemer"); Acis Capital Management, L.P. and Acis Capital Management GP, LLC (collectively "Acis"); and UBS Securities LLC and UBS AG London Branch (collectively "UBS")—and an unpaid vendor, Meta-E Discovery.

25. Following the venue transfer to Texas, on December 27, 2019, the Debtor filed its *Motion of the Debtor for Approval of Settlement with the Official Committee of*

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<sup>2</sup> Doc. 3. Unless otherwise referenced, all documents referencing "Doc." refer to the docket maintained in Case No. 19-34054-sgj11 (Bankr. N.D. Tex.).

<sup>3</sup> Doc. 1.

*Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (“Governance Motion”).<sup>4</sup> On January 9, 2020, the Court signed a Governance Order granting the Governance Motion.<sup>5</sup>

26. As part of the Governance Order, an independent board of directors—which included Seery as one of the selections of the Unsecured Creditors Committee—was appointed to the Board of Directors (the “Board”) of Strand, the Original Debtor’s general partner. The Board then appointed Seery as the Chief Executive Officer in place of the previous CEO, Mr. James Dondero, as well as the CRO.<sup>6</sup> Seery currently serves as Trustee of the Claimant Trust under the terms of the CTA and the CEO of the Reorganized Debtor.<sup>7</sup>

**B. *The Targeted Claims***

27. In his capacity as the Original Debtor’s CEO and CRO, Seery negotiated and obtained court approval for settlements with several large unsecured creditors including Redeemer, Acis, UBS, and another major unsecured creditor, HarbourVest (Redeemer, Acis, UBS, and HarbourVest are collectively the “Settling Parties”), resulting in the following allowed Claims:

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>
Redeemer	\$137 mm	\$0 mm

<sup>4</sup> Doc. 281.

<sup>5</sup> Doc. 339.

<sup>6</sup> Doc. 854, Order Approving Retention of Seery as CEO/CRO.

<sup>7</sup> See Doc. 1943, Order Approving Plan, p. 34.

Acis	\$23 mm	\$0 mm
HarbourVest	\$45 mm	\$35 mm
UBS	<u>\$65 mm</u>	<u>\$60 mm</u>
<b>(Totals)</b>	\$270 mm	\$95 mm

As reflected in these settlements, HarbourVest and UBS owned Class 9 claims in addition to Class 8 Claims. Class 9 Claims were subordinated to Class 8 Claims in the distribution waterfall in the Plan.

28. Each of the Settling Parties sold their Claims to Farallon and Stonehill (or affiliated special purpose entities) shortly after receiving court approval of the settlements. One of these “trades” took place within just a few weeks before the Plan’s Effective Date.<sup>8</sup> All of these trades occurred when HMIT held its 99.5% equity stake in the Debtor. Notice of these trades was first provided in filings in the records of the Original Debtor’s bankruptcy proceedings, as follows: Claim No. 23 (Doc. 2211, 2212, and 2215), Claim Nos. 190 and 191 (Doc. 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (Doc. 2263), Claim No. 81 (Doc. 2262), Claim No. 72 (Doc. 2261).

29. Farallon and Stonehill, both of whom are registered investment advisors that manage hedge funds, have fiduciary duties to their own investors. As such, they are acutely aware of their duties and obligation as fiduciaries. Yet, they both invested many tens of millions of dollars, directly or indirectly, to acquire the Claims in the absence of

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<sup>8</sup> Docs. 2697, 2698.

any publicly available information that could provide any economic justification for their investment decisions.

30. Upon information and belief, Stonehill and Farallon collectively invested an estimated \$160 million to acquire the Claims with a face amount of \$365 million, and they did so in the absence of any meaningful due diligence. Indeed, Farallon has admitted that it conducted no due diligence but relied on Seery's guarantees.

31. Stonehill and Farallon's investments become even more suspicious because the Plan provided the *only* publicly available information, which, at the time, included pessimistic projections that the Claims would ever receive full payment:

- a. From October 2019, when the original Chapter 11 Petition was filed, to January 2021, just before the Plan was confirmed, the projected value of HCM's assets dropped over \$200 million from \$566 million to \$364 million.<sup>9</sup>
- b. HCM's Disclosure Statement projected payment of 71.32% of Class 8 claims, and 0% of claims in Classes 9-11.<sup>10</sup>
  - o This meant that Farallon and Stonehill invested more than \$163 million in Claims when the publicly available information indicated they would receive \$0 in return on their investment as Class 9 creditors and substantially less than par on their Class 8 Claims.
- c. In HCM's Q3 2021 Post-Confirmation Report, HCM reported that the amount of Class 8 claims expected to be paid dropped even further from 71% to 54%.

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<sup>9</sup> Doc. 1473, Disclosure Statement, p. 18.

<sup>10</sup> Doc. 1875-1, Plan Supplement, Ex. A, p. 4.

d. Despite the stark decline in the value of the estate and in the midst of substantial reductions in the percentage of Class 8 Claims expected to be satisfied, Stonehill, through Jessup, and Farallon, through Muck, nevertheless purchased the four largest bankruptcy claims from the Redeemer Committee/Crusader Fund, Acis, HarbourVest, and UBS (collectively, again, the “Claims”) in April and August of 2021 in the combined amount of \$163 million.<sup>11</sup>

32. Upon information and belief, Stonehill, through its special purpose entity, Jessup, acquired the Redeemer Committee’s claim for \$78 million.<sup>12</sup> Upon information and belief, the \$23 million Acis claim<sup>13</sup> was sold to Farallon/Muck for \$8 million. Upon information and belief, HarbourVest sold its combined \$80 million in claims to Farallon/Muck for \$27 million. UBS sold its combined \$125 million in claims for \$50 million to both Stonehill/Jessup and Farallon/Muck. In the instance of UBS, *the total projected payout was only \$35 million*. Indeed, as part of these transactions, both Farallon and Stonehill purchased Class 9 Claims at a time when the Debtor’s Estate projected a zero dollar return on all such Claims.

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<sup>11</sup> Notices of Transfers [Docs. 2212, 2215, 2261, 2262, 2263, 2215, 2297, 2298]. The Acis claim was transferred on April 16, 2021; the Redeemer, Crusader, and HarbourVest claims were transferred on April 30, 2021; and the UBS claims were transferred on August 9, 2021.

<sup>12</sup> July 6, 2021, letter from Alvarez & Marsal CRF Management, LLC to Highland Crusader Funds Stakeholders.

<sup>13</sup> Seery/HCM have argued that \$10 million of the Acis claim is self-funding.

**C. *Material Non-Public Information is Disclosed to Seery's Affiliates at Stonehill and Farallon.***

33. One of the significant assets of the Debtor's Estate was the Debtor's direct and indirect holdings in Metro-Goldwyn-Mayer Studios, Inc. ("MGM").<sup>14</sup>

34. On December 17, 2020, James Dondero, sent an email to Seery. At that time, Dondero was a member of the MGM board, and the email contained material non-public information regarding Amazon and Apple's interest in acquiring MGM.<sup>15</sup> Of course, any such sale would significantly enhance the value of the Original Debtor's estate.

35. Upon receipt of this material non-public information, Seery should have halted all transactions involving MGM stock, yet just six days later Seery filed a motion in this Court seeking approval of the Original Debtor's settlement with HarbourVest - resulting in a transfer to the Original Debtor of HarbourVest's interest in a Debtor-advised fund, Highland CLO Funding, Ltd. ("HCLOF"), which held substantial MGM debt and equity.<sup>16</sup> Conspicuously, the HCLOF interest was not transferred to the Original Debtor for distribution as part of the bankruptcy estate, but rather to "to an entity to be designated by the Debtor" — *i.e.*, one that was not subject to typical bankruptcy reporting requirements.<sup>17</sup>

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<sup>14</sup> See Doc. 2229, p. 6.

<sup>15</sup> See Adversary Case No. 20-3190-sgj11, Doc. 150-1, p. 1674.

<sup>16</sup> Doc. 1625. Approximately 19.1% of HCLOF's assets were comprised of debt and equity in MGM.

<sup>17</sup> Doc. 1625.

36. Upon information and belief, aware that the Debtor's stake in MGM afforded a new profit center, Seery saw an opportunity to increase his own compensation and enlisted the help of Stonehill and Farallon to extract further value from the Original Debtor's Estate at the expense of other innocent creditors and equity. This *quid pro quo* included, at a minimum, a tacit, if not express, understanding that Seery would be well-compensated.

37. Until 2009, Seery was the Global Head of Fixed Income Loans at Lehman Brothers<sup>18</sup> where, on information and belief, he conducted substantial business with Farallon. Following the collapse of Lehman Brothers, Seery continued to work with, and indeed represented Farallon as its legal counsel. Seery ultimately joined a hedge fund, River Birch Capital,<sup>19</sup> which, along with Stonehill, served on the creditors committee in other bankruptcy proceedings. GCM Grovesnor, a global asset management firm, held four seats on the Redeemer Committee<sup>20</sup> and, upon information and belief, is a significant investor in Stonehill and Farallon. Grovesnor, through Redeemer, played a large part in appointing Seery as a director of Strand Advisors. Seery was beholden to Grovesnor from the outset, and, by extension, Grovesnor's affiliates Stonehill and Farallon.

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<sup>18</sup> Seery Resume [Doc. 281-2].

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

<sup>20</sup> Declaration of John A. Morris [Doc. 1090], Ex. 1, pp. 15.

38. As successful capital management firms, with advisory and fiduciary duties to their own clients, Stonehill and Farallon typically engage in robust due diligence before making significant investments. Yet, in this case, it would have been *impossible* for Stonehill and Farallon to forecast *any* profit at the time of their multi-million-dollar investments given the negative financial information disclosed by the Original Debtor's Estate. Seery, as the CEO, was aware of and involved in approving these negative financial projections. In doing so, Seery intentionally caused the publication of misleading, false information.

39. Seery shared with Stonehill and Farallon *non-public* information concerning the value of the Original Debtor's Estate which was higher than publicly available information. Thus, the only logical conclusion is that all Defendants knew that the publicly available projections, which accompanied the Plan, were understated, false, and misleading. Otherwise, Farallon, Muck, Stonehill and Jessup would not have made their multi-million-dollar investments. None of the Defendants disclosed their knowledge of the misleading nature of these financial projections when they had a duty to do so. None of the Defendants disclosed the nature of their dealings in acquiring the Claims.

40. By wrongfully exploiting non-public insider information, Stonehill and Farallon—acting through Muck and Jessup—became the largest holders of unsecured claims in the Debtor's Estate with resulting control over the Oversight Board and a front row seat to the reorganization and distribution of Claimant Trust Assets. As such, they

were given control (through Muck and Jessup) to approve discretionary bonuses and success fees for Seery from these assets.

**D. Distributions**

41. The MGM sale was ultimately consummated in March 2022 for \$6.1 billion in cash, plus \$2.5 billion in debt that Amazon assumed and immediately repaid.<sup>21</sup>

42. By the end of Q3 2021, just over \$6 million of the projected \$205 million available for general unsecured claimants had been disbursed.<sup>22</sup> No additional distributions were made to general unsecured claimholders until, suddenly, in Q3 2022 almost \$250 million was paid toward Class 8 general unsecured claims—\$45 million more than was *ever* projected.<sup>23</sup> Thus, Stonehill (Jessup) and Farallon (Muck) have already received returns that far eclipse their investment. They also stand to make further significant profits on their investments, including payments on Class 9 Claims.

43. As of December 31, 2022, the Claimant Trust has distributed \$255,201,228. On a pro rata basis, that means that innocent creditors have received approximately \$22,373,000 in distributions against the stated value of their allowed claims. That leaves a remaining unpaid balance of approximately \$9,627,000.

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<sup>21</sup> Amazon Q1 2022 10-Q.

<sup>22</sup> Doc. 3200.

<sup>23</sup> Doc. 3582.

44. Muck and Jessup already have received approximately \$232.8 million on their Claims. Assuming an original investment of approximately \$160 million, this represents over \$72 million in ill-gotten profits that, if disgorged, would be far more than what is required to fully pay all other innocent creditors - immediately placing HMIT in the status of a vested Claimant Trust Beneficiary.

45. It is clear Seery facilitated the sale of the Claims to Stonehill (Jessup) and Farallon (Muck) at discounted prices and used misleading financial projections to facilitate these trades. This was part of a larger strategy to install Stonehill (Jessup) and Farallon (Muck), his business allies, onto the Oversight Board where they would oversee lucrative bonuses and other compensation for Seery in exchange for hefty profits they expected to receive.

## **V. Causes of Action**

### ***A. Count I (against Seery): Breach of Fiduciary Duty***

46. The allegations in paragraphs 1-45 above are incorporated herein as if set forth verbatim.

47. As CEO and CRO of a debtor-in-possession, Seery owed fiduciary duties to HMIT, as equity, and to the Debtor's Estate, including, without limitation, the duty of loyalty. Seery also was under a duty to avoid conflicts of interests, but Seery willfully and knowingly engaged in conduct which conflicted with his fiduciary duties—and he did so out of financial self-interest.

48. By fraudulently providing and/or approving negative projections of the Debtor's Estate when he knew otherwise, Seery willfully and knowingly breached his fiduciary duties.

49. By misusing and disclosing confidential, material non-public information to Stonehill and Farallon, Seery willfully and knowingly breached his fiduciary duties.

50. By failing to disclose his role in the inside trades at issue, Seery willfully and knowingly breached his fiduciary duties.

51. As a result of his willful misconduct, Seery was unfairly advantaged by receiving additional undisclosed compensation and bonuses from the assets of the Debtor's Estate and from the Claimant Trust Assets—to the detriment of other innocent stakeholders, including HMIT, as former equity and a contingent Claimant Trust Beneficiary.

52. To remedy these breaches, Seery is liable for disgorgement of all compensation he received since his collusion with Farallon and Stonehill first began. Alternatively, Seery should be disgorged of all compensation paid to him under the terms of the CTA since the Effective Date of the Plan in August 2021.

53. Alternatively, Plaintiffs are entitled to recover damages measured by all ill-gotten compensation which Seery has received since his first collusive conduct began.

**B. Count II (against Stonehill, Farallon, Jessup and Muck): Breaches of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty**

54. The allegations in paragraphs 1-53 above are incorporated herein as if set forth verbatim.

55. Seery owed fiduciary duties to HMIT and the Debtor's Estate, and he willfully and knowingly breached these duties. Without limiting the foregoing, Seery owed a duty of loyalty which he willfully and knowingly breached. Seery also owed a duty to not engage in self-interested conduct to the detriment of the Debtor's Estate and innocent stakeholders. Seery also willfully and knowingly breached this duty.

56. Stonehill and Farallon were aware of Seery's fiduciary duties and, by purchasing the Claims and approving bonuses and other compensation for Seery, Stonehill (acting through Jessup) and Farallon (acting through Muck), willfully and knowingly participated in Seery's breaches or, alternatively, willfully aided and abetted such breaches.

57. Stonehill (Jessup) and Farallon (Muck) unfairly received many millions of dollars in profits and fees—and stand to earn even more profits and fees—to the detriment of innocent stakeholders, including HMIT.

58. Stonehill and Farallon are liable for disgorgement of all profits earned from their purchase of the Claims. In addition, they are liable in damages for excessive compensation paid to Seery as part of the covert *quid pro quo* with Seery.

*C. Count III (against all Defendants): Fraud by Misrepresentation and Material Nondisclosure*

59. The allegations in paragraphs 1-58 above are incorporated herein as if set forth verbatim.

60. Based on Seery's duties as CEO and CRO of a debtor-in-possession, and the other Defendants' duties as non-statutory insiders, Seery, Stonehill (Jessup), and Farallon (Muck) had a duty to disclose Stonehill and Farallon's plans to purchase the Claims, but they deliberately failed to do so. Seery also had a duty to disclose correct financial projections but, rather, misrepresented such values or failed to correct false and misleading projections. These factual misrepresentations and omissions were material.

61. The withheld financial information was material because it has had an adverse impact on control over the eventual distributions to creditors and former equity, as well as the right to control Seery's compensation. By withholding such information, Seery was able to plant friendly business allies on the Oversight Board to the detriment of innocent stakeholders.

62. Defendants knew that HMIT and other creditors were ignorant of their plans, and HMIT and other stakeholders did not have an equal opportunity to discover their scheme. HMIT and the other innocent stakeholders justifiably relied on misleading information relating to the value of the Original Debtor's Estate.

63. By failing to disclose material information, and by making or aiding and abetting material misrepresentations, Seery, Stonehill, Farallon, Muck, and Jessup intended to induce HMIT to take no affirmative action.

64. HMIT justifiably relied on Seery, Stonehill, Farallon, Muck, and Jessup's nondisclosures and representations, and HMIT was injured as a result and the Debtor's Estate was also injured.

65. As a result of their frauds, all Defendants should be disgorged of all profits and ill-gotten compensation derived from their fraudulent scheme. Seery is also liable for damages measured by excessive compensation he has received since he first engaged in willful misconduct.

***D. Count IV (against all Defendants): Conspiracy***

66. The allegations in paragraphs 1-65 above are incorporated herein as if incorporated herein verbatim.

67. Defendants conspired with each other to unlawfully breach fiduciary duties to HMIT and the Debtor's Estate, to conceal their fraudulent trades, and to interfere with HMIT's entitlement to the residual of the Claimant Trust Asset.

68. Seery's disclosure of material non-public information to Stonehill and Farallon, and Muck and Jessup's purchase of the Claims, are each overt acts in furtherance of the conspiracy.

69. HMIT's interest in the residual of the Claimant Trust Assets has been adversely impacted by this conspiracy. The assets have been depleted by virtue of Seery's compensation awards.

*E. Count V (against Muck and Jessup): Equitable Disallowance*

70. The allegations in paragraphs 1-69 above are incorporated herein as if set forth verbatim.

71. By purchasing the Claims based on material non-public information, Stonehill and Farallon, through Jessup and Muck, engaged in inequitable conduct.

72. By earning significant profits on their purchases, Muck and Jessup have been unfairly advantaged to the detriment of the remaining stakeholders, including HMIT.

73. Given this inequitable conduct, equitable disallowance of Muck's and Jessup's Claims to the extent over and above their initial investment is appropriate and consistent with the purposes of the Bankruptcy Code.

74. Pleading in the alternative only, subordination of Muck's and Jessup's General Unsecured Claim Trust Interests and Subordinated Claim Trust Interests to all other interests in the Claimant Trust, including HMIT's Contingent Trust Interest, is necessary and appropriate to remedy Muck's and Jessup's wrongful conduct, and is also consistent with the purposes of the Bankruptcy Code.

***F. Count VI (against all Defendants): Unjust Enrichment and Constructive Trust***

75. The allegations in paragraphs 1-74 above are incorporated herein as if set forth verbatim.

76. By acquiring the Claims using material non-public information, Stonehill and Farallon breached a relationship of trust with the Original Debtor's Estate and other innocent stakeholders and were unjustly enriched and gained an undue advantage over other creditors and former equity.

77. Allowing Stonehill, Farallon, Muck and Jessup to retain their ill-gotten benefits at the expense of other innocent stakeholders and HMIT, as former equity, would be unconscionable.

78. Stonehill, Farallon, Muck, and Jessup should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment.

79. The proceeds Stonehill, Farallon, Muck, and Jessup have received from the Claimant Trust are traceable and identifiable. A constructive trust should be imposed on such proceeds to secure the restitution of these improperly retained benefits.

***F. Count VI (Against all Defendants): Declaratory Relief***

80. The allegations in paragraphs 1-79 are incorporated herein as if set forth verbatim.

81. HMIT seeks declaratory relief. The Court has jurisdiction to provide declaratory judgment relief when there is an actual controversy that has arisen and exists relating to the rights and duties of the parties.

82. Bankruptcy Rule 7001 provides that “a proceeding to recover property or money,” may include declaratory relief. *See*, Fed. R. Bank P. 7001(1), (9).

83. The Claimant Trust Agreement is governed under Delaware law. The Claimant Trust Agreement incorporates and is subject to Delaware trust law. HMIT seeks a declaration, as follows:

- a. There is a ripe controversy concerning HMIT’s rights and entitlements under the Claimant Trust Agreement;
- b. As a general matter, HMIT has standing to bring an action against a trustee even if its interest is considered contingent;
- c. HMIT’s status as a Claimant Trust Beneficiary is fully vested upon disgorgement of the ill-gotten profits of Muck and Jessup, and by extension, Farallon and Stonehill;
- d. HMIT’s status as a Claimant Trust Beneficiary is fully vested upon the equitable disallowance of the Claims held by Muck and Jessup over and above their initial investments. Alternatively, HMIT’s status as a Claimant Trust Beneficiary is fully vested when all of Muck’s and Jessup’s trust interests are subordinated to the trust interests held by HMIT;
- e. Seery is properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and/or the Claimant Trust because of Seery’s fraudulent conduct, bad faith, willful misconduct and unclean hands;

- f. Muck and Jessup are properly estopped from asserting that HMIT is not an appropriate party to bring this derivative action on behalf of the Reorganized Debtor and the Claimant Trust because of their fraudulent conduct, bad faith, willful misconduct and unclean hands;
- g. All Defendants are estopped from asserting that HMIT does not have standing in its individual capacity due to their fraudulent conduct, bad faith, willful misconduct and unclean hands.

### **VI. Punitive Damages**

84. The allegations in paragraphs 1-74 are incorporated herein as if set forth verbatim.

85. The Defendants' misconduct was intentional, knowing, willful and fraudulent and in total disregard of the rights of others. An award of punitive damages is appropriate and necessary under the facts of this case.

86. All conditions precedent to recovery herein have been satisfied.

### **VII. Prayer**

WHEREFORE, HMIT prays for judgment as follows:

1. Equitable disallowance of the Claims over and above Muck's and Jessup's original investments (or, alternatively, subordination of their Claimant Trust Interests, as addressed herein);
2. Disgorgement of all funds distributed from the Claimant Trust to Muck and/or Jessup over and above their original investments;
3. Disgorgement of compensation paid to Seery in managing or administering the Original and Reorganized Debtor's Estate;
4. Imposition of a constructive trust;

5. Declaratory relief as described herein;
6. An award of actual damages as described herein;
7. An award of exemplary damages as allowed by law;
8. Pre- and post-judgment interest; and,
9. All such other and further relief to which HMIT may be justly entitled.

Respectfully Submitted,

**PARSONS MCENTIRE MCCLEARY  
PLLC**

By: /s/\_\_\_\_\_

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*Counsel for the Reorganized Debtor and the Highland Claimant Trust*

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

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In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	

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**NOTICE OF FILING OF  
THE CURRENT BALANCE SHEET OF THE HIGHLAND CLAIMANT TRUST**

**PLEASE TAKE NOTICE** that, pursuant to the Court’s *Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing [Docket No. 3870]*, Highland Capital Management, L.P., the reorganized debtor in the above-captioned bankruptcy case, and the Highland Claimant Trust hereby file the

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<sup>1</sup> The last four digits of the Reorganized Debtor’s taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

current balance sheet attached hereto as **Exhibit A** showing the general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.

*[Remainder of Page Intentionally Left Blank]*

Dated: July 6, 2023

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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*/s/ Zachery Z. Annable*

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**EXHIBIT A**

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**

The accompanying notes are integral to understanding this balance sheet  
 (Estimated and unaudited, \$ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
<b>Assets</b>			
Cash and equivalents	\$ 13	\$ -	\$ 13
Disputed claims reserve <sup>(2)</sup>	12	-	12
Other restricted cash	12	-	12
Investments <sup>(3)</sup>	118	(12) <sup>(6)</sup>	106
Notes receivable, net <sup>(4)</sup>	86	(83) <sup>(4)</sup>	3
Other assets	6	-	6
<b>Total assets</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Liabilities</b>			
Secured and other debt	\$ -	\$ -	\$ -
Distribution payable <sup>(2)</sup>	12	-	12
Additional indemnification reserves	-	90 <sup>(5)</sup>	90
Other liabilities	15	13 <sup>(5)</sup>	28
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 27</b>	<b>\$ 103</b>	<b>\$ 130</b>
<b>Book/adjusted book equity (see accompanying notes) <sup>(5)</sup></b>	<b>220</b>	<b>(198)</b>	<b>22</b>
<b>Total liabilities and book/adjusted book equity</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
 <b>Supplemental Info: <sup>(7)</sup></b>			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	\$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	\$ 139		

**{SEE ACCOMPANYING NOTES ON THE FOLLOWING PAGE}**

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**

**Notes:**

(1) This presentation is not in accordance with US GAAP and is unaudited, but has nevertheless been prepared in good faith and with the intention of providing the reader with a comprehensive understanding of the remaining assets and liabilities of the Highland Claimant Trust, Highland Capital Management, LP, HCMLP GP LLC, and Highland Litigation Trust (the "Consolidated Entities"). These entities have each been aggregated on a stand-alone basis, with intercompany amounts eliminated. Funds and entities that may otherwise be consolidated by one or more of the Consolidated Entities under US GAAP are not fully consolidated and rather are included solely at their equity value. For example, if Highland Capital Management, LP is a 20% investor in a managed fund with assets of \$100 million and liabilities of zero that would normally require consolidation under US GAAP, the presentation contained herein reflects an investment of \$20 million as opposed to fully consolidating the \$100 million fund and reflecting minority interest of \$80 million. The value of the Highland Indemnity Trust is not included herein. As of May 31, 2023, \$35 million has been funded to the Highland Indemnity Trust. Highland Indemnity Trust beneficiaries are Claimant Trust Indemnified Parties. Any unused assets remaining after satisfying indemnification obligations will be transferred to the Highland Claimant Trust or otherwise be distributed to the Claimant Trust Beneficiaries in accordance with the Indemnity Trust Agreement. For presentation purposes, it is assumed that outstanding indemnification obligations will consume the entirety of the Highland Indemnity Trust. Further, no current recovery amount has been ascribed to the "Kirschner Adversary" as all such value is considered to be contingent, nor have any liabilities been reserved for various success fees payable to professionals associated with the Kirschner Adversary or any other litigations. Such liabilities are also contingent in nature.

(2) Amounts already authorized for distribution, but reserved in the Disputed Claims Reserve related to resolution of pending disputed claims.

(3) Value reflected herein consists primarily of ownership in private funds and subsidiaries, valued using NAV as the practical expedient, public & private investments (including residual sale escrows), valued at fair value, and SE Multifamily Holdings, LLC, valued using book equity value as of the most recent financials received. See note 6 for further information. There is substantial risk and uncertainty with respect to the timing and ultimate cash value to be received from monetizations of these investments and such value could ultimately be materially impacted by actual monetizations.

(4) Book amounts reflect principal amounts outstanding on various notes, without discount, adjustment, or estimates of future costs of collection, with two exceptions. The first exception is to the note receivable from Hunter Mountain Investment Trust for which over \$90 million of principal and interest is currently due, payable, and in default. These notes are a component of the "Kirschner Adversary" which is currently stayed. These principal and interest amounts are fully reserved based on the assumption that Hunter Mountain Investment Trust has no other assets other than a contingent, unvested interest in the Highland Claimant Trust. That assumption is subject to change. The second exception relates to the note receivable from Highland Select Equity Master Fund, LP. This amount is fully reserved based on the pendency of the Ch. 7 proceeding for Highland Select Equity Master Fund, LP and the minimal remaining value of Highland Select Equity Master Fund, LP's assets, which is expected to be further consumed (at least in part) by trustee and professional fees. Aside from these exceptions, approximately \$65 million of these principal amounts (further described below) are subject to ongoing litigation with various note counterparties who are contesting the validity of their obligations. These disputed amounts are contained within the "Balance per books" column herein without discount or adjustment. While the makers have asserted defenses, Highland believes they are meritless and is confident that judgments will ultimately be entered in Highland's favor. However, based on Mr. Dondero's history of failing to satisfy judgments entered against his affiliates by others (e.g., UBS, the Redeemer Committee, Joshua Terry, and Patrick Daugherty), the effect of complete non-payment of principal is reflected in the "adjustments" column, which also assumes non-payment of the currently performing \$18 million note receivable from The Dugaboy Investment Trust. Ultimate recoveries from these notes could differ materially from the current principal outstanding depending on the outcome of the pending litigation and no recovery can be assured. Accrued interest is captured in the "Other assets" line item, subject to the exceptions discussed within this footnote. While there is currently a report & recommendation from the bankruptcy court for summary judgment, plus costs of collection, no costs of collection are reflected as assets on this balance sheet, so would be incremental. The estimated amount of such costs of collections are over \$3 million.

Detail of note principal amounts subject to report & recommendations of the bankruptcy court, currently pending in district court (excludes accrued interest):

<u>Note Maker</u>	<u>Principal O/S</u>	<u>Comments</u>
NexPoint Advisors, LP	\$ 25	Consists of a single note
NexPoint Real Estate Partners, LLC	12	fka HCRE Partners, LLC; five underlying notes comprise balance
NexPoint Asset Management, LP	11	fka Highland Capital Management Fund Advisors, LP; four underlying notes comprise balance
James Dondero	10	Three underlying notes comprise balance
Highland Capital Management Services, Inc.	7	Five underlying notes comprise balance
Sub-total	\$ 65	

(5) The book equity amount reflects a multitude of estimates including, but not limited to the value of investments and collectability of notes receivable. For book purposes, no contingent liabilities or indemnification reserves have been recorded as liabilities that would reduce book equity, notwithstanding that it is currently expected that there will be a) a need to maintain further highly material indemnification reserves; and b) further incurrence of springing contingent liabilities if distribution milestones are achieved. The amount of further incremental indemnification reserves are currently expected to exceed \$90 million, and may ultimately be greater, which will be required to be funded (at least in part) prior to any further material distributions to Trust Beneficiaries. In the absence of a global settlement that, among other things, fully and finally releases all Claimant Trust Indemnified Parties, Highland believes the additional indemnification reserves are required because, among other reasons, (a) based on the so-called "Dondero exclusion," insurance is likely to remain cost-prohibitive and/or unsatisfactory, leaving the Claimant Trust and Indemnity Trust assets as the sole sources of funding for indemnity obligations, (b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected. Any unused assets remaining after satisfaction of indemnity obligations will be distributed as required by the Indemnity Trust Agreement. The amount of incremental springing contingent liabilities are expected to range from \$5 million to \$15 million, which are exclusive of various success fees associated with recoveries under the "Kirschner Adversary" and others. No reserves have been accrued for any current, pending, or threatened litigation brought by any Dondero-related parties. Lastly, it is expected that the trust and its subsidiaries will operate at an operating loss prospectively. The corresponding information in the "adjustments" column above is an estimate of the effects of these incremental indemnification reserves and contingent liabilities, but does not assume any expected future operating cash burn, which is expected to be significant.

(6) The value of SE Multifamily Holdings LLC maintained on this balance sheet is \$15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of \$20 million and \$12 million, Highland also received interest from Dondero to acquire the interest for \$3.8 million, among other assets. The purpose of this adjustment is to assume that the holding could be monetized at the lower \$3.8 million level, which would result in a \$11.9 million decrease to Highland's book equity if it were hypothetically transacted at that level. Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero-controlled entities have not provided to date.

(7) Amounts described herein represent the face amounts of outstanding allowed and pending claims. The pending claim amounts do not include amounts that are the subject of various appeals or that are unliquidated. The allowed and pending claims (along with accrued interest) could ultimately be satisfied in part or in full using 1) the assets of the disputed claims reserve, 2) the residual amount of cash in the indemnity trust after satisfying all indemnification obligations, and 3) the residual amount of cash remaining after monetizing all other non-cash assets and paying liabilities and future expenses.

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

  
United States Bankruptcy Judge

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

IN RE:

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Reorganized Debtor.

§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj-11

**MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN “GATEKEEPER  
PROVISION” AND PRE-CONFIRMATION “GATEKEEPER ORDERS”: DENYING  
HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY MOTION FOR  
LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING<sup>1</sup>  
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]**

**I. INTRODUCTION**

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. (“Highland” or “Reorganized Debtor”).

<sup>1</sup> On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland’s Plan<sup>2</sup>—the Plan having been confirmed on February 22, 2021.<sup>3</sup> The Plan was never stayed; it went effective on August 11, 2021 (“Effective Date”), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”), in late summer 2022, including an approval of the so-called Gatekeeper Provision<sup>4</sup> therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the “Motion for Leave”) filed by a movant known as Hunter Mountain Investment Trust (“HMIT”).

A. *Who is the Movant, HMIT?*

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland’s Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust (“Claimant Trust”) created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

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<sup>2</sup> Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

<sup>3</sup> The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Confirmation Order”)[Bankr. Dkt. No. 1943].

<sup>4</sup> In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, “revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan’s exculpation, and affirm[ing] on all remaining grounds.” *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at \*1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, “for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion,” the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section “IV(E)(2) – *Injunction and Gatekeeper Provisions*” of the original opinion: “The injunction and gatekeeper provisions are, on the other hand, perfectly lawful.” was replaced with “We now turn to the Plan’s injunction and gatekeeper provisions.” In all other respects, the Fifth Circuit panel’s original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than \$62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

*B. What Does the Movant HMIT Seek Leave to File?*

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")<sup>5</sup> in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of \$365 million face amount of *allowed* unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"<sup>6</sup> and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

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<sup>5</sup> In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

<sup>6</sup> The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

*C. Why Does HMIT Need to Seek Leave?*

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.<sup>7</sup> The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."<sup>8</sup>

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<sup>7</sup> To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

<sup>8</sup> See *Highland Capital*, 48 F.4th at 427, 435.

*D. Some Further Context Regarding Post-Confirmation Litigation Generally.*

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland’s non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an *emergency* hearing on the instant Motion for Leave (HMIT had sought a setting on three-days’ notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and “Active Dondero-Related Litigation” matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties (“Highland,” the “Claimant Trust,” and “Seery”) in various other state, federal, and foreign jurisdictions.<sup>9</sup>

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero’s unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to “burn down the place” after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 (“Rule 202”). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

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<sup>9</sup> See Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of “Active Dondero-Related Litigation” and noting that the list is “a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit.”). Just since the filing by the Highland Parties of the list, *three* of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court’s dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court’s dismissal of an appeal by NexPoint Advisors, L.P. (“NexPoint”) of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a “person aggrieved” by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court’s dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a “person aggrieved” by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit’s ruling on February 21, 2023, affirming the district court’s dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court’s affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor’s largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). See *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly “rubber stamp” Seery’s “excessive compensation” as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful “insider trading” of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and “insider trading” to the Texas State Securities Board (“TSSB”) and the Executive Office of the United States Trustee (“EOUST”).

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are “colorable” claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 (“June 8 Hearing”), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT’s reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT’s request for leave to pursue its Proposed Claims. The court’s reasoning is set forth below.

## **II. BACKGROUND**

### *A. Highland’s Bankruptcy Case, Dondero’s Removal as CEO, and the Plan*

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada (“Okada”). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland’s equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. (“Strand”), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the “Petition Date”), Highland, with Dondero in control<sup>10</sup> and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the “Committee”) (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.<sup>11</sup> As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,<sup>12</sup> and three independent directors (“Independent Directors”) were

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<sup>10</sup> Mark Okada resigned from his role with Highland prior to the Petition Date.

<sup>11</sup> This order is hereinafter referred to as the “January 2020 Order” and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

<sup>12</sup> Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland’s motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor’s perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers’ (“D&O”) insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court’s prior authority. The gatekeeper provision approved by the court in its January 9 Order states,<sup>13</sup>

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so “subject at all times to the supervision, direction and authority of the Independent Directors” and to his agreement to “resign immediately” “[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee”<sup>14</sup> and to “not cause any Related Entity to terminate any agreements with the Debtor.”<sup>15</sup> The court later

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<sup>13</sup> January 2020 Order, 3-4, ¶ 10.

<sup>14</sup> January 2020 Order, 3, ¶ 8.

<sup>15</sup> *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,<sup>16</sup> which included essentially the same “gatekeeper” language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero’s plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.<sup>17</sup> As the Fifth Circuit described the situation, after Dondero’s plans failed “he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital’s management, threatening employees, and canceling trades between Highland Capital and its clients.”<sup>18</sup> On October 9, 2020, Dondero resigned from all positions with the Debtor and its

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<sup>16</sup> See the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 (“July 2020 Order”) [Bankr. Dkt. No. 854].

<sup>17</sup> According to Seery’s credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to “burn the place down” if his proposed plan was not accepted. See Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

<sup>18</sup> *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at \*1, \*26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero's purported threats and disruptions to the Debtor's operations.<sup>19</sup>

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan") [Bankr. Dkt. No. 1808] on January 22, 2021.<sup>20</sup> Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the "Dondero Parties") at the time of the confirmation hearing,<sup>21</sup> which was held over two days in early February 2021. The Plan is essentially an "asset monetization" plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland's various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles ("CLOs") and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

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June 7, 2021) where this court "h[eld] Dondero in civil contempt, sanctioning him \$100,000, and comparing this case to a 'nasty divorce.'")

<sup>19</sup> See Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as "Highland Ex. \_\_\_\_" and to exhibits offered and admitted by HMIT as "HMIT Ex. \_\_\_\_."

<sup>20</sup> The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 ("Disclosure Statement") [Bankr. Dkt. No. 1473].

<sup>21</sup> The only other objection remaining was the objection of the United States Trustee to the Plan's exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board (“CTOB”), and pursuant to the terms of the Plan and the Claimant Trust Agreement (“CTA”),<sup>22</sup> the CTOB approved Seery’s compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.<sup>23</sup> Seery’s compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder’s pro rata share of a contingent interest in the Claimant Trust (“Contingent Claimant Trust Interest”), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

*B. Dondero Communicates Alleged Material Non-Public Information (“MNPI”) to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers “Rubber Stamp” His Compensation as Claimant Trustee Post-Confirmation*

1. The December 17, 2020 MGM Email

Between Dondero’s forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery<sup>24</sup> an email

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<sup>22</sup> Highland Ex. 38

<sup>23</sup> The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). See Joint Opposition ¶ 79.

<sup>24</sup> Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, “communicating . . . with any Board member” (including Seery) without including Debtor’s counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to “Morris Dec. Ex. \_” are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the “MGM Email”) that featured prominently in HMIT’s Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information (“MNPI”) regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. (“MGM”), likely by either Amazon or Apple.<sup>25</sup> At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly “insider” information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).<sup>26</sup> A timeline of events (in late 2020) in the weeks leading up to Dondero’s MGM Email to Seery, following Dondero’s departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor’s trading activities by demanding—with no legal basis—that Seery cease selling certain assets;<sup>27</sup>
- November 24: Bankruptcy Court enters an Order approving the Debtor’s Disclosure Statement, scheduling the confirmation hearing on the Debtor’s Plan for January 13, 2021, and granting related relief;<sup>28</sup>
- November 24–27: Dondero personally interferes with the Debtor’s

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*of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.’s Joint Opposition to Hunter Mountain Investment Trust’s Motion for Leave to File Verified Adversary Proceeding*, Bankr. Dkt. No. 3784.

<sup>25</sup> See Proposed Complaint ¶ 45.

<sup>26</sup> See *id.* ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”); ¶ 4 (“As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery’s ongoing compensation – to Seery’s benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.”).

<sup>27</sup> See Highland Ex. 14, Dondero-Related Entities’ October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

<sup>28</sup> See Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;<sup>29</sup>

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero's two non-debtor affiliates, NexPoint Advisors, L.P. ("NexPoint") and Highland Capital Management Fund Advisors, L.P. ("HCMFA"; together with NexPoint, the "Advisors");<sup>30</sup>
- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than \$60 million—this was part of creating liquidity for the Debtor's Plan;<sup>31</sup>
- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: "*Be careful what you do -- last warning*";<sup>32</sup>
- December 10: Dondero's interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order ("TRO") against Dondero;<sup>33</sup>
- December 16: This court denies as "frivolous" a motion filed by certain affiliates of Dondero, in which they sought "temporary restrictions" on certain asset sales;<sup>34</sup> and
- December 17: Dondero sends the unsolicited MGM Email<sup>35</sup> to Seery, which violates the TRO entered just a week earlier.<sup>36</sup>

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<sup>29</sup> See Highland Ex. 15, 30-36.

<sup>30</sup> Morris Decl. Ex. 17; see also Transcript of June 8, 2023 Hearing on HMIT's Motion for Leave ("June 8 Hearing Transcript"), 273:23-24.

<sup>31</sup> Morris Decl. Exs. 18-21; see also June 8 Hearing Transcript, 273:23-274:1.

<sup>32</sup> Morris Decl. Ex. 22 (emphasis added); see also June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: "A: [T]his came after he threatened me. He threatened me in writing. I'd never been threatened in my career. I've never heard of anyone else in this business who's been threatened in their career. So anything I would get from him, I was going to be highly suspicious.").

<sup>33</sup> See Morris Decl. Ex. 23, *Order Granting Debtor's Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

<sup>34</sup> See Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

<sup>35</sup> Highland Ex. 11.

<sup>36</sup> Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

[The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor's counsel] being on it. Furthermore, Pachulski had advised Dondero's counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line “Trading Restriction re MGM – material non public information” and stated:

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.<sup>37</sup>

Seery credibly testified at the June 8 Hearing that he was “highly suspicious” when he received the MGM Email. This was because, among other reasons, Dondero sent it *after*: (i) unsuccessful efforts to impede the Debtor’s trading activities (followed by the TRO); (ii) the “be careful what you do” text to Seery by Dondero; (iii) Highland’s termination of its shared service arrangements with Dondero’s various affiliated entities; (iv) the bankruptcy court’s approval of the disclosure statement; and (v) Highland’s demand to collect on the demand notes for which Dondero and his entities were liable.<sup>38</sup> Highland’s Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.<sup>39</sup> Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement<sup>40</sup> and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

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<sup>37</sup> Highland Ex. 11.

<sup>38</sup> June 8 Hearing Transcript, 273:1-274:4.

<sup>39</sup> June 8 Hearing, 215:21-216:9.

<sup>40</sup> See Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT's Rule 202 petition in Texas state court for pre-suit discovery,<sup>41</sup> he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple's interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades.***

It is noteworthy that *Dondero's labeling of the MGM Email (in the subject line) as a communication containing "material non public information" did not make it so.* In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT's Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally "take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]" because—as earlier noted—"MGM was already on the restricted list at Highland Capital . . . before I got to Highland."<sup>42</sup> Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months<sup>43</sup> and that was officially

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<sup>41</sup> Highland Ex. 9 ¶ 3 (emphasis added).

<sup>42</sup> June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT's counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that "it was probably a first-quarter event" and that "Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest" were not MNPI. *Id.*, 217:23-218:10. He testified that "it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter." *Id.*, 219:3-7.

<sup>43</sup> See Highland Ex. 25 ("MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.") (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months *before* certain of their claims—the UBS claims—were purchased).<sup>44</sup> For example, as early as January 2020, Apple and Amazon were identified as being among a new group of “Big 6” global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, “MGM, in particular, seems like a logical candidate to sell this year” having already held “preliminary talks with Apple, Netflix and other larger media companies.”<sup>45</sup> In October 2020, the Wall Street Journal reported that MGM’s largest shareholder, Anchorage Capital Group (“Anchorage”), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM’s Board. The article reported that “[i]n recent months, Mr. Ulrich has said he is working toward a deal,” and he specifically named Amazon and Apple as being among four possible buyers.<sup>46</sup> Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed “material interest” in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he “knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,”<sup>47</sup> that “as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that’s what the board meeting was. We were going into exclusive negotiations to culminate the merger with

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shareholders, was “Highland Capital Management, LP”) (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for \$8.4 billion).

<sup>44</sup> The MGM-Amazon deal was ultimately consummated in March 2022 for approximately \$6.1 billion, net of cash acquired, plus approximately \$2.5 billion in debt that Amazon assumed and immediately repaid.

<sup>45</sup> Highland Ex. 25.

<sup>46</sup> Highland Ex. 26.

<sup>47</sup> June 8 Hearing Transcript, 127:2-4.

them.”<sup>48</sup> Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed “inside” information to Seery in the MGM Email. He did not “say anything about Amazon hitting the price.” He did not say anything about the MGM board going into exclusive negotiations with Amazon “to culminate the merger with them.” Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why “[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price,” Dondero simply answered, “The only way you generally get something done at attractive levels in business is if two people are interested,” suggesting that he specifically **did not** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM’s strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.<sup>49</sup>

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind ‘James Bond,’ Explores a Sale*, reported that MGM had “tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process,” and had “a market value of around \$5.5 billion, based on privately traded shares and including debt.” The Wall Street Journal Article reiterated

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<sup>48</sup> *Id.*, 161:10-14.

<sup>49</sup> June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage “has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks,” and (ii) “Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers.”<sup>50</sup> (*Id.* Ex. 27.) The Wall Street Journal’s reporting was picked up and expanded upon in other publications soon after. For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is not enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM “hopes to spark a battle that could interest streaming services such as Amazon Prime”;<sup>51</sup>
- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that “it’s now become apparent that MGM is actually up on the auction block,” noting that the Wall Street Journal was “reporting that the studio has begun a formal sale process” and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;<sup>52</sup> and
- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.<sup>53</sup>

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

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<sup>50</sup> Highland Ex. 27.

<sup>51</sup> Highland Ex. 28.

<sup>52</sup> Highland Ex. 29.

<sup>53</sup> Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero’s Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT’s allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT’s and Dondero’s conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims (“Purchased Claims”) based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on “circumstantial” evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the “late spring” of 2021 concerning Farallon’s recent acquisition of certain claims in the Highland bankruptcy case.<sup>54</sup> Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.<sup>55</sup>

At the June 8 Hearing, HMIT offered Dondero’s testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn (“Linn”) and Raj Patel (“Patel”),

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<sup>54</sup> Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

<sup>55</sup> Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that “supported” the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the “sideshow” litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery’s assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes (“Dondero Notes”)<sup>56</sup> (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).<sup>57</sup> He testified that his purpose in taking these notes and in initiating the phone calls was that “[w]e’d been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,”<sup>58</sup> and further, on *voir dire* from the Proposed Defendants’ counsel, that the purpose of taking the notes was so that he had “a written record of the important points that [he] discussed . . . so I know how to address it the next time.”<sup>59</sup> The handwritten notes<sup>60</sup> stated:

<i>Raj Patel bought it because of Seery</i>	1
<i>50-70¢ not compelling</i>	2
<i>Class 8</i>	3
<i>Asked what would be compelling</i>	4
<i>-- No Offer</i>	5
<i>Bought in Feb/March timeframe</i>	6
<i>Bought assets w/ Claims</i>	7
<i>Offered him 40-50% premium</i>	8
<i>130% of cost; “Not Compelling”</i>	9
<i>No Counter; Told Discovery coming</i>	10

<sup>56</sup> HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero’s “present sense impression” of the telephone conversations.

<sup>57</sup> June 8 Hearing Transcript, 133:1-136:3.

<sup>58</sup> *See id.*, 133:13-23.

<sup>59</sup> *See id.* (on *voir dire*), 144:1838-145:4.

<sup>60</sup> HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero “that he bought it because Seery told him to buy it and they had made money with Seery before”<sup>61</sup> and that Farallon “bought [the claim] because he was very optimistic regarding MGM”<sup>62</sup> before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero’s first call with Linn and lines 9 and 10 referring to his second call with Linn.<sup>63</sup> Dondero testified that the “50-70¢” in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon’s<sup>64</sup> claims because “[w]e knew that they had – that the claims had traded around 50 cents” and “[w]e wanted to prevent the \$5 million-a-month burn” (referring to attorney’s fees in the Highland case) and that “not compelling Class 8” in lines 2-3 referred to Linn’s response to him that the offer was not compelling.<sup>65</sup> Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn’s response that “he had no offer.”<sup>66</sup> Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending \$5 million a month on legal fees, Farallon should want to sell its claims and Linn’s alleged response that “Seery told him it was worth a lot more.”<sup>67</sup> Lastly, Dondero testified on direct examination

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<sup>61</sup> June 8 Hearing Transcript, 134:7-10, 135:13-22.

<sup>62</sup> *Id.*, 139:3-11.

<sup>63</sup> *Id.*, 136:4-138:16.

<sup>64</sup> As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

<sup>65</sup> June 8 Hearing Transcript, 136:4-16.

<sup>66</sup> *Id.*, 136:17-23.

<sup>67</sup> *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.<sup>68</sup>

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM; (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo*; or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.<sup>69</sup> Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust<sup>70</sup> and that he never discussed Seery's compensation with Farallon.<sup>71</sup>

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

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<sup>68</sup> *Id.*, 138:8-22.

<sup>69</sup> *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

<sup>70</sup> *Id.*, 200:13-201:1.

<sup>71</sup> *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.<sup>72</sup>

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition (“First Rule 202 Petition”) he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon’s purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims “sight unseen—relying entirely on Seery’s advice solely because of their prior dealings.”<sup>73</sup> Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that “On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery’s say-so because they had made so much money in the past when Seery told them to purchase claims” and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.<sup>74</sup>

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<sup>72</sup> Highland Ex. 7.

<sup>73</sup> *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

<sup>74</sup> *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:<sup>75</sup>

Last year, I called Farallon’s Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that “I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds,” and that “[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, “I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee.”<sup>76</sup> Dondero attached as Exhibit A to his declaration a letter from Douglas Draper (“Draper”), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that “[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors’ Committee] in the bankruptcy of [Highland],” and later noted that he “became involved in Highland’s bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary.”<sup>77</sup> Mr. Draper laid out the same allegations of insider claims trading, breach of

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<sup>75</sup> Highland Ex. 5, ¶ 2.

<sup>76</sup> *Id.*, ¶¶ 3-4.

<sup>77</sup> *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.<sup>78</sup> The U.S. Trustee’s office took no action. Dondero made a second and third attempt to get the U.S. Trustee’s office to conduct an investigation into the same allegations laid out in Draper’s letter, this time in “follow-up” letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina (“Rukavina”), in which Rukavina wrote “to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy.”<sup>79</sup> Again, the U.S. Trustee’s office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition *filed by HMIT* (“Second Rule 202 Petition”), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero’s unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.<sup>80</sup> In this new sworn statement, Dondero describes for the first time the “call” he had with Linn as having been “phone calls” with Patel and Linn and *mentions MGM* and Farallon’s alleged optimism about the *expected sale of MGM*.<sup>81</sup>

In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC (“Farallon”), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

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<sup>78</sup> *Id.*, Ex. A, 6-11.

<sup>79</sup> HMIT Ex. 61.

<sup>80</sup> Highland Ex. 9.

<sup>81</sup> *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.<sup>82</sup>

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are “colorable,” stated in its Motion for Leave that “[t]he Court also should be aware that the Texas States [sic] Securities Board (“TSSB”) opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT’s position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely ‘colorable.’”<sup>83</sup> But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter (“TSSB Letter”) to Highland, informing it that “[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.”<sup>84</sup> HMIT’s counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing “on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry.”<sup>85</sup> The court overruled HMIT’s objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB “investigation” as relevant evidence the court “should be aware” of in making its determination of whether the Proposed Claims were “colorable.”<sup>86</sup>

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<sup>82</sup> Highland Ex. 10.

<sup>83</sup> Motion for Leave, ¶ 37.

<sup>84</sup> See Highland Ex. 33.

<sup>85</sup> June 8 Hearing Transcript, 323:22-324:3.

<sup>86</sup> *Id.*, 324:4-328:2.

*C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims*

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

<b>Claimant(s)</b>	<b>Date Filed/ Claim No.</b>	<b>Asserted Amount</b>	<b>Claim Settled/Allowed? If so, Amount</b>	<b>Date Filed/ Rule 3001 Notice Dkt. No.</b>
Acis Capital Management LP and Acis Capital Management, GP LLC (together, “Acis”)	12/31/2019 Claim No. 23	\$23,000,000	Yes <sup>87</sup>  \$23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”)	4/3/2020 Claim No. 72	\$190,824,557	Yes <sup>88</sup>  \$137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the “HarbourVest Parties”)	4/8/2020  Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes <sup>89</sup>  \$80,000,000 in aggregate (\$45,000,000 General Unsecured Claim, and \$35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

<sup>87</sup> Bankr. Dkt. No. 1302. The Debtor’s settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

<sup>88</sup> Bankr. Dkt. No. 1273.

<sup>89</sup> Bankr. Dkt. No. 1788. The Debtor’s settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the “UBS Parties”)	6/26/2020 Claim Nos. 190, 191	\$1,039,957,799.40	Yes <sup>90</sup>  \$125,000,000 in aggregate (\$65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)
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HMIT insists that it “made no sense” for the Claims Purchasers to buy the Purchased Claims because “the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk,” and “their investment was projected to yield a small return with virtually no margin for error.”<sup>91</sup> Dondero testified that it was *his* view that there was insufficient information in the public to justify the claims purchases.<sup>92</sup> But, HMIT’s arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT’s own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.<sup>93</sup> Taking into account the face amount of the allowed claims, the Claims Purchasers’ projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value <sup>94</sup>	Purchaser	Purchase Price	Projected Profit
Redeemer	\$137.0	\$0.0	\$97.71	Stonehill	\$78.0	\$19.71
Acis	\$23.0	\$0.0	\$16.4	Farallon	\$8.0	\$8.40

<sup>90</sup> Bankr. Dkt. No. 2389. The Debtor’s settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

<sup>91</sup> Proposed Complaint, ¶ 3.

<sup>92</sup> June 8 Hearing Transcript, 187:3-7 (“Q: And it’s your testimony that there wasn’t sufficient information in the public for them to buy – this is your view – that there wasn’t sufficient information in the public to justify their purchases. Is that your view? A: Correct.”).

<sup>93</sup> *Id.*, ¶ 42.

<sup>94</sup> “Ascribed Value” is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	\$45.0	\$35.0	\$32.09	Farallon	\$27.0	\$5.09
UBS	\$65.0	\$60.0	\$46.39	Stonehill & Farallon	\$50.0	(\$3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the “late spring” of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.<sup>95</sup> Based on an aggregate purchase price of \$113 million for these three claims, the Claims Purchasers would have expected to net over \$33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT’s and Dondero’s assertions that it did not “make any sense” for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay **30 percent more** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon’s purchase of the claims.<sup>96</sup> Dondero essentially testified that he wanted to purchase Farallon’s claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill *as creditors*, but instead he wanted to purchase the claims because “if we owned all the claims, it would settle the case.”<sup>97</sup>

<sup>95</sup> See Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged “*quid pro quo*” was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. See, Highland Ex. 34, *Amazon’s \$8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

<sup>96</sup> June 8 Hearing Transcript, 187:8-11.

<sup>97</sup> *Id.*, 187:12-189:10.

*D. Fifth Circuit’s Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court’s Order Approving Highland’s Motion to Conform Plan*

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting “the remoteness of their economic interests” that “[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan.”<sup>94</sup> The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland’s employees (with certain exceptions); Seery as Highland’s CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all “Related Persons.” The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a “gatekeeper” to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:<sup>98</sup>

No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents *a colorable claim of any kind*, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

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<sup>98</sup> Plan, 50-51 (emphasis added).

authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both “colorable” *and* a claim for “willful misconduct or gross negligence,” effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of “willful misconduct or gross negligence,” whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing *any kind of claim* against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are “colorable.”<sup>99</sup>

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<sup>99</sup> It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--e.g., the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed<sup>100</sup> the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan’s exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the “Protection Provisions”) impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)’s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, “affirm[ed] the confirmation order in large part” and “reverse[d] *only insofar as the plan exculpates* certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties *from the plan’s exculpation*, and affirm[ed] on all remaining grounds.”<sup>101</sup> The Fifth Circuit specifically found the “injunction and gatekeeping provisions [to be] sound” and found that it was only “the *exculpation* of certain non-debtors” that “exceed[ed] the bankruptcy court’s authority,” agreeing with the bankruptcy court’s conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties” in part, and only disagreeing to the extent that the *exculpation* provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and “revers[ing] and strik[ing] the few unlawful parts

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<sup>100</sup> On appeal, the appellant funds (“Funds”), whom this court found to be “owned and/or controlled” by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court’s factual finding “because it threatens the Funds’ compliance with federal law and damages their reputations and values” and because “[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him.” *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the “clear error” standard of review, the Fifth Circuit “le[ft] the bankruptcy court’s factual finding undisturbed” because “nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are ‘owned and/or controlled by [Dondero].’” *Id.* at 434-35.

<sup>101</sup> See *supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the “Motion for Rehearing”) on September 2, 2022. The movants had asked the Fifth Circuit to “narrowly amend the [initial] Opinion in order to confirm the Court’s holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute ‘Protected Parties’).” In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would “reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan’s exculpation, and affirm on all remaining grounds.” *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan’s *exculpation provision*.<sup>102</sup> The Fifth Circuit then remanded to the Bankruptcy Court “for further proceedings in accordance with the opinion.”<sup>103</sup>

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that “those orders have the effect of exculpating the Independent Directors and Seery in his executive capacities” such that “[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors’ agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders.”<sup>104</sup>

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit’s mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit’s ruling: narrow the defined term for “Exculpated Parties” to read as follows:

“Exculpated Parties” means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit’s mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit’s ruling required more surgery on the Plan than simply narrowing the defined term “Exculpated Parties.” On February 27, 2023, this court entered its order granting

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<sup>102</sup> *Id.* at 435.

<sup>103</sup> *Id.* at 440. The Fifth Circuit’s docket reflects that it issued its Judgment and mandate on September 12, 2022.

<sup>104</sup> *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, “To the extent Appellants seek to roll back the protections in the bankruptcy court’s January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded.” *Id.*

Highland’s motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of “Exculpated Parties” – and no more.<sup>105</sup> The objecting parties’ direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

*E. HMIT’s Motion for Leave*

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint (“Initial Proposed Complaint”) and two sworn declarations of Dondero that were attached as “objective evidence” in “support[ ]” of the Motion for Leave,<sup>106</sup> and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a “supplement” to its Motion to Leave (“Supplement”),<sup>107</sup> to which it attached a revised proposed verified complaint (“Proposed Complaint”)<sup>108</sup> as Exhibit 1-A to the Motion for Leave and stated that “[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action.”<sup>109</sup> The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).<sup>110</sup>

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<sup>105</sup> Bankr. Dkt. No. 3672.

<sup>106</sup> Bankr. Dkt. No. 3699.

<sup>107</sup> Bankr. Dkt. No. 3760.

<sup>108</sup> *See supra* note 5.

<sup>109</sup> Supplement ¶ 1.

<sup>110</sup> Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding *the post-confirmation, pre-Effective Date purchase of allowed unsecured claims*. The Proposed Defendants would be:

**Seery**, who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland’s CRO during the case, then CEO, and, also, an Independent Board Member of Highland’s general partner during the Highland case). Seery is best understood as the man who took Dondero’s place running Highland—per the request of the Committee.

**Claims Purchasers**, who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC (“Farallon”); Muck Holdings, LLC (“Muck”), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC (“Stonehill”); and Jessup Holdings, LLC (“Jessup”), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the “Claims Purchasers”). The Claims Purchasers purchased \$240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another \$125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk’s docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).

**John Doe Defendants Nos. 1-10**, which are described to be “currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.”

**Highland**, as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

**Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

**HMIT**, which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT’s limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

**Highland**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

**Claimant Trust**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.<sup>111</sup> The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that “wrongful conduct occurred” and “improper trades” were made.<sup>112</sup> HMIT believes the Claims Purchasers paid around \$160 million for the \$365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland’s Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

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<sup>111</sup> In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

<sup>112</sup> Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months *before* certain of their claims—the UBS claims—were purchased).<sup>113</sup> In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor’s estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery’s allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers’ claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and “innocent stakeholders” who were allegedly injured by Seery’s and the Claims Purchasers’ alleged conspiratorial and

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<sup>113</sup> The MGM-Amazon deal was ultimately consummated in March 2022 for approximately \$6.1 billion, net of cash acquired, plus approximately \$2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery's pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that "[t]he attached Adversary Proceeding alleges claims which are substantially more than 'colorable' based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty."<sup>114</sup>

*F. Is HMIT Really Dondero by Another Name?*

The Proposed Defendants argue that HMIT's Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick ("Patrick"), who has been HMIT's administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were "colorable" such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT's only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT's first witness called in support of its motion, and the first

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<sup>114</sup> See Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that "Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court's Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement."

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.<sup>115</sup> Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."<sup>116</sup> After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.<sup>117</sup> Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately \$62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.<sup>118</sup> Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.<sup>119</sup> He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

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<sup>115</sup> See June 8 Hearing Transcript, 113:10-25.

<sup>116</sup> *Id.*

<sup>117</sup> June 8 Hearing Transcript, 307:7-308:2.

<sup>118</sup> *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's \$62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

<sup>119</sup> *Id.*, 308:3-16.

Seery's compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).<sup>120</sup> Patrick admitted that Dugaboy was paying HMIT's attorneys' fees pursuant to a settlement agreement between HMIT and Dugaboy.<sup>121</sup>

On cross-examination by HMIT's counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.<sup>122</sup> HMIT's counsel argued that the point of this questioning was that "they're just trying to draw Dondero into this and – this vexatious litigant argument, and we're just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding."<sup>123</sup> But, Dondero and HMIT's counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as "our" Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland's Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT's counsel referred to the order as "an order denying *our second*" Rule 202 Petition.<sup>124</sup> And, Dondero testified that his warning to Linn in May 2021 that "discovery was coming" was "my response to I knew they had traded on material nonpublic information" and that "I thought it would be a lot easier to get

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<sup>120</sup> *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT's counsel objection to counsel's line of questioning regarding Patrick's personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT's counsel argued (311:4-19) that the line of questioning was an "invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case."

<sup>121</sup> *Id.*, 312:24-313:18.

<sup>122</sup> *Id.*, 315:3-9.

<sup>123</sup> *Id.*, 316:6-11.

<sup>124</sup> *Id.*, 58:11-13. The court overruled HMIT's relevance objection and admitted Highland's Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years” and that “*we’ve* been trying for two years to get . . . discovery.”<sup>125</sup>

Dondero’s use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero’s *modus operandi* since the “nasty breakup” between Dondero and Highland that culminated with Dondero’s ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland’s implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court’s finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court’s factual finding because, among other reasons, “[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him.”<sup>126</sup> Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT’s counsel and Patrick otherwise, Dondero is the driving force behind HMIT’s Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee’s office.

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<sup>125</sup> *Id.*, 191:5-25.

<sup>126</sup> *Highland Capital*, 48 F.4th at 434-435.

*G. Opposition to Motion for Leave: Arguing No Standing and No “Colorable” Claims*

Highland, the Claimant Trust, and Seery (together, the “Highland Parties”) filed a joint opposition (“Joint Opposition”) to HMIT’s Motion for Leave on May 11, 2023.<sup>127</sup> The Claims Purchasers filed a separate objection (“Claims Purchasers’ Objection”) to the Motion for Leave on May 11, 2023, as well.<sup>128</sup> In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are “colorable” claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).<sup>129</sup>

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers (“Claims Sellers”), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred *allowed* claims, HMIT would still be in the same position it is today: the holder of a

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<sup>127</sup> Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.’s Joint Opposition to Hunter Mountain Investment Trust’s Motion for Leave to File Verified Adversary Proceeding* (“Morris Declaration”) that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

<sup>128</sup> Bankr. Dkt. No. 3780.

<sup>129</sup> See Joint Opposition ¶ 139 (“Because HMIT lacks standing, this Court need not reach the merits of HMIT’s proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.”).

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not “colorable.”

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are “colorable” (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the “plausibility” standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

*H. HMIT’s Reply to the Proposed Defendants’ Opposition to the Motion for Leave*

In its reply brief (“Reply”), filed by HMIT on May 18, 2023,<sup>130</sup> it argues that it has constitutional standing as an “aggrieved party” to bring the Proposed Claims on behalf of itself.<sup>131</sup> HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.<sup>132</sup> Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the “colorability” of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the “four corners” of the Proposed Complaint

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<sup>130</sup> Bankr. Dkt. No. 3785.

<sup>131</sup> See Reply ¶ 7.

<sup>132</sup> See, Reply ¶ 23 n.5, where HMIT argues “The nature of this injury, in addition to Seery’s influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so.”

and “not weigh extraneous evidence,”<sup>133</sup> take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents “colorable” claims.

*I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes*

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days’ notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding *what kind of hearing* the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.<sup>134</sup> The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

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<sup>133</sup> See Reply ¶ 47.

<sup>134</sup> Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland’s proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a “colorable” claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that “the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint.”<sup>135</sup> Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court’s *Barton Doctrine*<sup>136</sup> pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.<sup>137</sup> On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that “the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave” and “[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose.”

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

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<sup>135</sup> Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 (“April 24 Transcript”), 14:6-11.

<sup>136</sup> The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

<sup>137</sup> See April 24 Transcript, 36:24-37:4 (“[W]e’re exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we’re doing is replicating a 12(b)(6) hearing on a motion for leave, we’re actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation.”); 37:5-13 (“The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to ‘screen and prevent bad-faith litigation.’ Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn’t do anything at all to screen. There’s no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.”).

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT's request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court "Rule 202" proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents ("Motion to Exclude"), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT's witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties' witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

### III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have *standing* to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "*colorable*." But prior to getting into the weeds on *standing* and "*colorability*," some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of *improper* claims trading.

#### A. *Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?*

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: *When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?* Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered *allowing* the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing *material non-public information* to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.<sup>138</sup> In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

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<sup>138</sup> *E.g.*, Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as “claims trading”) is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code’s enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter “*Bankruptcy Markets*”).<sup>139</sup>

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that “distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments.”<sup>140</sup> Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

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<sup>139</sup> See also Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11*, 12 CARDOZO L. REV. 1, 25 (1990) (noting that “the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790” when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

<sup>140</sup> Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). See also Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.<sup>141</sup> On the flipside, “[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process.”<sup>142</sup>

So, what are the “rules of the road” here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that “[i]f a claim other than one based on a publicly traded note, bond, or debenture” is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the *transferor* of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

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<sup>141</sup>See *Bankruptcy Markets*, at 70. See also *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (“Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.”).

<sup>142</sup> *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that “vulture investors add value by disciplining managers of distressed firms”).

by the alleged transferor). Third, the *economic consideration paid need not be disclosed to the court or anyone*. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the “lead bank”) will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.<sup>143</sup> To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.<sup>144</sup>

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and *is mostly a matter of private contract between buyer and seller*. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

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<sup>143</sup> Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

<sup>144</sup> Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).<sup>145</sup> Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.<sup>146</sup> Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.<sup>147</sup>

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a \$900,000 bank claim for \$16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

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<sup>145</sup> *In re Applegate Prop. Ltd.*, 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.*, 118 B.R. 282, 289-90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.*, 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

<sup>146</sup> *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

<sup>147</sup> *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.)*, 340 B.R. 180 (Bankr. S.D.N.Y. 2006), vacated, *Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.)*, 379 B.R. 425 (S.D.N.Y. 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.)*, 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson)*, 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased \$525,000 of unsecured claims for \$67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.*, 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the **transferor**; where there is no objection by the **transferor**, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.)*, 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter)*, 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.*, 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.<sup>148</sup> But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there *seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter*. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a “mom-and-pop” type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth \$10's of millions of dollars to \$100's of millions of dollars in face value. And, of course, the sellers/transfersors of the claims have never shown up, subsequent to the claims trading

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<sup>148</sup> Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of “inequitable conduct” might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.*, 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that “equitable considerations can justify only the subordination of claims, not their disallowance” and also noting that “three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:]: (i) The claimant must have engaged in some type of inequitable conduct[:]; (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[:]; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act.” In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.*, 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may *recharacterize* a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is “unenforceable against the debtor and property of the debtor, under any agreement or applicable law....” is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here *had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case*. Thus, the amounts that would be paid on them were “locked in,” so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any “claw-back” litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.<sup>149</sup> ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

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<sup>149</sup> See *discussion* in BANKRUPTCY MARKETS, at 91:

Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

- I. Breach of Fiduciary Duties (Seery)
- II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)
- III. Conspiracy (all Proposed Defendants)
- IV. Equitable Disallowance (Claims Purchasers)
- V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)
- VI. Declaratory Judgment (all Proposed Defendants)

*The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.*

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

**Hypothetical #1:** The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. *As noted, there was no objection to the Rule 3001(e) notices here.*

**Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. *As noted, there is no dispute between purchasers and sellers here.*

**Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan “at any time before 180 days after the date of entry of the order for confirmation” and the court “may revoke such order if and only if such order was procured by fraud.” *As noted, here HMIT has suggested that the “pessimistic” plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.*

**Hypothetical #4:** As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser’s claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code (“the court may designate any entity whose acceptance or rejection of such plan was not in good faith”). *Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.*

**Hypothetical #5:** As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate *claims* to *other claims*. *See* Section 510(c) of the Bankruptcy Code. But here, HMIT is seeking either: (a) equitable subordination of the *claims* of the Claims Purchaser to HMIT’s *Class 10 former equity interest* (in contravention of the explicit terms of section 510(c)) or, (b) *equitable disallowance* of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

**Hypothetical #6:** Bankruptcy Code section 502(b)(1) and the Fifth Circuit’s *Lothian Oil* case may permit “recharacterization” of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case.”). The problem here is that Bankruptcy Rule 9024 provides that a motion for “reconsideration of an order allowing or disallowing a claim against the estate *entered without a contest* is not subject to the one year limitation prescribed in Rule 60(c)” (emphasis added). Here there was most definitely “a contest” with regard to all of these purchased claims. *Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.*

**Hypothetical #7:** If a party believes “insider trading” occurred there are governmental agencies that investigate and police that. *Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC’s purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing.*

**Hypothetical #8:** The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of “insider information” (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the “open kimono” metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.*, Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly *unregulated* activity in the bankruptcy world.

***HMIT is attempting to pursue causes of action here that, to this court’s knowledge, have never been allowed in a context like this.***

*B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?*

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT’s lack of *constitutional* standing but also argue that HMIT does not have *prudential* standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.<sup>150</sup>

The Highland Parties’ standing arguments focus almost entirely on HMIT’s lack of *prudential* standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants “play fast and loose with standing arguments” and that HMIT has *constitutional* standing as a “party aggrieved”<sup>151</sup> to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

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<sup>150</sup> *See* Proposed Complaint, ¶ 26.

<sup>151</sup> Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: *constitutional Article III standing*, which implicates federal court subject matter jurisdiction,<sup>152</sup> and the narrower standing concept of *prudential standing*, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.<sup>153</sup> “If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve.”<sup>154</sup> These elements ensure that a plaintiff has “such a personal stake in the outcome of the controversy’ as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on his behalf.”<sup>155</sup>

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<sup>152</sup> Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

<sup>153</sup> See *Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court’s seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that “the irreducible constitutional minimum of standing contains [the] three elements”); see also *Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4<sup>th</sup> 298, 302 (5<sup>th</sup> Cir. 2022) (citing *id.*).

<sup>154</sup> *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

<sup>155</sup> *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,<sup>156</sup> the Fifth Circuit set forth a detailed analysis of the two types of “standing,” noting that the term “standing” is often “misused” in our legal system, which has led to confusion for both attorneys and judges.<sup>157</sup> The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that *in addition to* Article III constitutional standing, “courts have occasionally articulated other ‘standing’ requirements that plaintiffs must satisfy under certain conditions, *beyond those imposed by Article III*,”<sup>158</sup> such as the “standing” requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

*Abraugh* involved the civil rights statutes that provide, among other things, that “a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]” and noted that these statutes impose additional “standing” requirements that are a matter of prudential standing, not constitutional standing.<sup>159</sup> In *Abraugh*, the Fifth Circuit reversed and remanded a district court’s dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a “lack of subject matter jurisdiction” because the plaintiff in that action lacked standing.<sup>160</sup> The plaintiff was the mother of a prisoner

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<sup>156</sup> 26 F.4th 298.

<sup>157</sup> *Id.* at 303.

<sup>158</sup> *Id.* at 302 (emphasis added).

<sup>159</sup> *Id.* at 302-303.

<sup>160</sup> *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana’s wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana’s wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of *prudential* standing, and the plaintiff/mother actually *did* have *Article III* constitutional standing (“a constitutionally cognizable interest in the life of her son”).<sup>161</sup> Thus, the district court’s error was *not* in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked *subject matter jurisdiction* to consider any of the plaintiff’s/mother’s amended complaints.<sup>162</sup> The Fifth Circuit noted specifically that<sup>163</sup>

prudential standing does not present a jurisdictional question, but “a merits question: who, according to the governing substantive law, is entitled to enforce the right?” As the Federal Rules of Civil Procedure make clear, “an action must be prosecuted in the name of the real party in interest.” FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of “prudential” standing. “Not one of our precedents holds that the inquiry is jurisdictional.” It goes only to the validity of the cause of action. And “the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction.”

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the *appellate standing* of the appellants, have taken pains to distinguish between the concepts of:

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 301, 303-304. The Fifth Circuit opined that “the district court did not err in describing [the mother’s] inability to sue under Louisiana law as a defect of ‘standing[, b]ut it is a defect of prudential standing, not Article III standing” thus technically not implicating the federal court’s subject matter jurisdiction. *Id.* at 303.

<sup>163</sup> *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the “person aggrieved” test, which is applied in the Fifth Circuit in determining whether a party has *standing to appeal a bankruptcy court order*—which it describes as a narrower and “more exacting” standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the “person aggrieved” standard that is typically applied to ascertain bankruptcy *appellate* standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.<sup>164</sup> Because it is narrower and “more exacting” than the test for Article III constitutional standing, it involves application of prudential standing considerations.<sup>165</sup> The Fifth Circuit describes the “person aggrieved” test for bankruptcy appellant standing as requiring that an appellant show that it was “*directly and adversely affected pecuniarily* by the order of the bankruptcy court,” requiring “a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions.”<sup>166</sup> In affirming the district court’s dismissal of NexPoint’s appeal of the bankruptcy court’s fee orders, due to NexPoint’s lack of prudential standing under the “person aggrieved” test, the court rejected NexPoint’s argument that it had standing to appeal

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<sup>164</sup> *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, \*2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

<sup>165</sup> *Id.* at \*1, \*\*4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the “person aggrieved” test for standing in bankruptcy actions as a test for “prudential standing.”); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero’s standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that “[i]t is substantially more difficult to have standing to appeal a bankruptcy court’s order than it is to pursue a typical complaint under Article III of the U.S. Constitution” and that “the Fifth Circuit has long recognized that bankruptcy cases’ wide-reaching scope calls for a more stringent standing test.”).

<sup>166</sup> *See id.* at \*3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the “person aggrieved” prudential standing standard is applied in bankruptcy actions: “Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited.*” *Id.* (cleaned up).

because “it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the ‘person aggrieved’ standard” did not survive the Supreme Court’s 2014 *Lexmark*<sup>167</sup> opinion,<sup>168</sup> which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not “limit a cause of action that Congress has created merely because ‘prudence’ dictates.”<sup>169</sup> The Fifth Circuit held that the Supreme Court’s reminder in *Lexmark* did not nullify the “person aggrieved” test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*<sup>170</sup> (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, “rather than broadly modifying—or undermining—all prudential standing concerns, such as the one animating the ‘person aggrieved’ standard in bankruptcy appeals.”<sup>171</sup>

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties’ confusion about the standing issue, as exemplified in the parties’ reference to constitutional standing when they were actually arguing that they had prudential standing under the “person aggrieved” test: “Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

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<sup>167</sup> *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

<sup>168</sup> *Id.* at \*2.

<sup>169</sup> *See id.* at \*4 (cleaned up).

<sup>170</sup> 778 F.3d 502 (5th Cir. 2015).

<sup>171</sup> *NexPoint*, 2023 WL 4621466 at \*4 (cleaned up). The Fifth Circuit explicitly stated that “*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here.” *Id.* at \*5 (cleaned up).

standing requirement embodied in the ‘person aggrieved’ test.”<sup>172</sup> The district court noted that it had an “independent obligation to consider constitutional standing before reaching its prudential aspects.”<sup>173</sup> The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.<sup>174</sup> Interestingly, the court noted that, while the parties did not contest the district court’s determination that NexPoint had standing to pursue the appeal, it “may consider prudential standing issues *sua sponte*.”<sup>175</sup> In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential “person aggrieved” test applied to bankruptcy appeals, which “is, of necessity, quite limited” and “an even more exacting standard than traditional constitutional standing,” as it requires an appellant to show that it is “directly, adversely, and financially impacted by a bankruptcy order.”<sup>176</sup>

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must **first** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then **additionally** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might **limit** who may sue. Notwithstanding HMIT’s argument that it has standing under the “person

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<sup>172</sup> *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, \*1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the “person aggrieved” test and affirmed the bankruptcy court’s order after finding the third appellant, NexPoint, to have prudential standing under the “person aggrieved” test. *Id.* at \*\*1-3 and \*4.

<sup>173</sup> *Id.* at \*1 n.2.

<sup>174</sup> *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

<sup>175</sup> *Id.* at 501 (cleaned up).

<sup>176</sup> *Id.*

aggrieved” test<sup>177</sup>—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy *appellate* matters.<sup>178</sup> As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the “person aggrieved” test is a test for bankruptcy *appellate* standing, which is narrower than a party in interest’s right to be heard in bankruptcy cases in general.<sup>179</sup> The court rejected an argument that Bankruptcy Code § 1109, which provides that “[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter” confers *appellate* standing, noting that “one’s standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision” and that the “person aggrieved” test for bankruptcy appellate standing is narrower than the test for determining one’s standing to appear and be heard in a bankruptcy proceeding.<sup>180</sup>

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

## 2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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<sup>177</sup> HMIT insists that it has constitutional standing to bring claims on its individual behalf “as an aggrieved party.” See Reply, ¶ 7.

<sup>178</sup> HMIT’s argument in this matter that it has constitutional standing because it is a “party aggrieved” incorrectly conflates the prudential bankruptcy appellate “person aggrieved” test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term “standing” when they equate a lack of “standing,” in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

<sup>179</sup> See *NexPoint*, 2023 WL 4621466 at \*6.

<sup>180</sup> *Id.* at \*6 (cleaned up)(“Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the ‘person aggrieved’ standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer *appellate* standing.”)(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.<sup>181</sup>

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”<sup>182</sup> The Supreme Court in the *Spokeo* case expounded on the “concrete and particularized” requirements of the “injury in fact” element. Particularization requires a showing that the injury “must affect the plaintiff in a personal and individual way,” but while particularization is necessary, it alone is “not sufficient,” because an injury in fact must also be “concrete.”<sup>183</sup> And, concreteness is “quite different from particularization.”<sup>184</sup> A “concrete” injury must be “real,” and “not abstract,” though it does not mean that the injury must be “tangible,” as the injury can be intangible and nevertheless be concrete.<sup>185</sup> In addition to the concreteness and particularization requirements, an injury in fact must be “actual or imminent” such that “allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing.”<sup>186</sup> “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

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<sup>181</sup> See *supra* note 153.

<sup>182</sup> *Lujan*, 504 U.S. at 560 (cleaned up).

<sup>183</sup> *Spokeo*, 578 U.S. at 339.

<sup>184</sup> *Id.* at 340.

<sup>185</sup> *Id.*

<sup>186</sup> *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending”; “allegations of *possible* future injury are not sufficient.”<sup>187</sup>

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that “the injury has to be fairly traceable to the challenged action of the defendant.”<sup>188</sup> The “fairly traceable” test requires an examination of “the causal connection between the assertedly unlawful conduct and the alleged injury.”<sup>189</sup>

Redressability. The third element—redressability—requires the court to examine the connection “between the alleged injury and the judicial relief requested.”<sup>190</sup> “Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court.”<sup>191</sup> “[A] court must determine that there is an available remedy which will have a ‘substantial probability’ of redressing the plaintiff’s injury.”<sup>192</sup>

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers’ acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.<sup>193</sup>

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<sup>187</sup> *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)(“[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a ‘possible’ future injury similarly will not suffice.”)(cleaned up).

<sup>188</sup> *Lujan*, 504 U.S. at 560-61 (cleaned up).

<sup>189</sup> *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

<sup>190</sup> *Id.* (noting “it is important to keep the [‘fairly traceable’ and ‘redressability’] inquiries separate if the ‘redressability’ component is to focus on the requested relief.”).

<sup>191</sup> *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998).

<sup>192</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at \*5 (“Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff’s Article III standing.”).

<sup>193</sup> As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT’s lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers' argument here. What is HMIT's concrete and particularized injury—that is “real” and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery's alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.<sup>194</sup> Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery's actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT's allegations regarding Seery's “excessive” compensation were based entirely on Dondero's pure speculation. In reality, Seery's base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed *in advance of* the Plan confirmation hearing and approved by this court as part of the Plan

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applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (“[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”)(cleaned up); *Abraugh*, 26 F.4th at 304 (“It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.”)(cleaned up).

<sup>194</sup> At the June 8 Hearing, HMIT's counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT's counsel acknowledged that claims trades, in and of themselves, would not “involve injury to the Reorganized Debtor and to the Claimant Trust” and that claims trades are “normally outside the purview of the bankruptcy court” but that “[h]ere, we have alleged . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.” June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery's excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery’s post-Effective Date compensation would include a “Base Salary” (again, same as during the bankruptcy case), a “success fee,” and “severance.”<sup>195</sup> The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT’s Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy’s claims to have standing based on the *speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan*. For example, the Fifth Circuit affirmed the district court’s dismissal of an appeal by Dugaboy of the bankruptcy court’s order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

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<sup>195</sup> The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that “The salient terms of each Trustee’s employment, including such Trustee’s duties and compensation shall be set forth in the Claimant Trust Agreement . . . .” The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the “Base Salary”). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

“person aggrieved” test to appeal the bankruptcy court’s order, Dugaboy lacked constitutional standing “because they have not identified any injury fairly traceable to the Order: *the injuries identified are speculative at best and nonexistent at worst.*”<sup>196</sup> HMIT’s allegations of injury are, without a doubt, “merely conjectural or hypothetical” and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests.”<sup>197</sup> The court finds that HMIT would not meet the “concrete and particularized” or the “actual or imminent” requirements for an “injury in fact,” and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show “traceability” with respect to the Claims Purchasers and/or Seery (i.e., a “causal connection between the assertedly unlawful conduct and the alleged injury”<sup>198</sup>), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show “redressability” (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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<sup>196</sup> *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, \*1 n.2 (N.D. Tex. Jan. 28, 2022), *aff’d* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer’s opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, \*3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff’d per curiam*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that “*its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor's former equity holders*” and that “it ha[d] standing as a ‘contingent beneficiary’ under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full,” and Judge Scholer stated, “This assertion is premised on the assumption that Dugaboy’s 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a ‘speculative prospect of harm is far from a direct, adverse, pecuniary hit’ as required to confer standing.”

<sup>197</sup> *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

<sup>198</sup> *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.<sup>199</sup> The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of *equitable subordination* of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), *claims cannot be subordinated to interests*. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,<sup>200</sup> that *equitable disallowance* of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit’s *Lothian Oil* case might permit “recharacterization” of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case.”). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for “reconsideration of an order allowing or disallowing a claim against the estate *entered without a contest* is not subject to the one year limitation prescribed in Rule 60(c)” (emphasis added). As further noted earlier, here there was most definitely a “contest” with regard to all of these purchased claims. ***Thus, it would appear***

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<sup>199</sup> See *supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT’s alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT’s distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the “redressability” requirement with respect to the Claims Purchasers.

<sup>200</sup> *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5<sup>th</sup> Cir. 1977).

*that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.*

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to “federal bankruptcy law,” HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which “applies to this proceeding pursuant to” Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. (“LWE”)*,<sup>201</sup> the Fifth Circuit’s leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing *where the plaintiff otherwise lacks standing under applicable state law*. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 “speaks only to the adequacy of the . . . pleadings,” and “cannot be understood to ‘abridge, enlarge, or modify any substantive right,’”<sup>202</sup> including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT’s reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances *during* a bankruptcy case, to “file

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<sup>201</sup> 858 F.2d 233 (5th Cir. 1988).

<sup>202</sup> *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee”<sup>203</sup> and does not apply to a party’s right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate’s assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist,<sup>204</sup> Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this *post*-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors’ committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine “as a threshold issue” whether the creditors’ committee in that case could assert its claims under Louisiana law.<sup>205</sup> The court specifically addressed whether the creditors’ committee could pursue a derivative action under Louisiana law and concluded that “there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions.”<sup>206</sup> So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.<sup>207</sup> Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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<sup>203</sup> *LWE*, 858 F.2d at 247.

<sup>204</sup> See *In re Craig’s Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

<sup>205</sup> *LWE*, 858 F.2d at 236-45.

<sup>206</sup> *Id.* at 243.

<sup>207</sup> See *In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors’ committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, “To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the “Internal Affairs Doctrine.”<sup>208</sup> In addition, because HMIT’s breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.<sup>209</sup> For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

- a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,<sup>210</sup> and “to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement” such that “the plaintiff must be a beneficial owner” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.”<sup>211</sup> This requirement is “mandatory and exclusive” and only “a beneficial owner” “has standing to bring a derivative claim on behalf of the

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may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors’ state of incorporation or formation.”).

<sup>208</sup> Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

<sup>209</sup> *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

<sup>210</sup> *See* Proposed Complaint, ¶ 26.

<sup>211</sup> *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at \*19 n.123 (Del. Ch. June 15, 2011), *aff’d* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust.”<sup>212</sup> The Highland Parties argue that HMIT is not a “beneficial owner” of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it *is* currently, and was at all relevant times, a “beneficial owner” of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT’s interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a “beneficial owner” of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT’s former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a “Contingent Claimant Trust Interest,” as defined under the Plan.<sup>213</sup> HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present “beneficial owner” under Delaware trust law.

The Highland Parties argue that HMIT is not a “beneficial owner” of the Claimant Trust; rather, the “beneficial owners” of the Claimant Trust are the “Claimant Trust Beneficiaries,”<sup>214</sup> which are defined in the Plan and the CTA as “the Holders of Allowed General Unsecured Claims” (which are in Class 8 under the Plan) and “Holders of Allowed Subordinated Claims” (which are in Class 9 under the Plan);<sup>215</sup> HMIT, a holder of a Class 10 interest under the Plan, is neither.

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<sup>212</sup>*In re Nat’l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: “Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction.” Reply, ¶ 19 (citing 12 Del C. § 3816).

<sup>213</sup> See Plan Art. III.H.10 and Art. I.B.44.

<sup>214</sup> Section 2.8 of the CTA provides, “The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . .” HMIT Ex. 26, § 2.8.

<sup>215</sup> See Plan Art. I.B.44 (“‘Claimant Trust Beneficiaries’ means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a “Contingent Claimant Trust Interest,” has only an *unvested* contingent interest in the Claimant Trust and, as such, is not a “beneficial owner” of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it “should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants’] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein.”<sup>216</sup> The court disagrees.

HMIT’s status as a “beneficiary” of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that “Contingent Trust Interests” “shall not have any rights under this Agreement” and will not “be deemed ‘Beneficiaries’ under this Agreement,” “unless and until” they vest in accordance with the Plan and the CTA. It is undisputed that HMIT’s Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested based on HMIT’s unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a “beneficial owner” of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.<sup>217</sup>

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Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.”); CTA § 1.1(h). *See also*, CTA, 1 at n.2 (“For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.”). HMIT Ex. 26.

<sup>216</sup> Proposed Complaint ¶ 24.

<sup>217</sup> *See Nat’l Coll.*, 251 A.3d at 190–92 (dismissing creditors’ derivative claims because they were not “beneficial owners of the Trusts”); *Hartsel*, 2011 WL 2421003, at \*19 n.123 (dismissing derivative claims by investors that “no longer own shares” because “those investors no longer have standing to pursue a derivative claim”).

- b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*<sup>218</sup> To bring “a derivative action” on behalf of a limited partnership, “the plaintiff must be a partner or an assignee of a partnership interest” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.”<sup>219</sup>

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT *was* a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.<sup>220</sup> Because HMIT would not hold a partnership interest in the Reorganized Debtor at “the time of bringing the action,” it “lacks derivative standing” to bring claims “on the partnership’s behalf.”<sup>221</sup> HMIT likewise cannot satisfy “the continuous ownership requirement”; when HMIT’s limited partnership interest in the original Debtor was cancelled on the Plan’s Effective Date, HMIT “los[t] standing to continue a derivative suit” on behalf of the Debtor.<sup>222</sup> Finally, to the extent HMIT

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<sup>218</sup> Proposed Complaint ¶ 25.

<sup>219</sup> 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) (“The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party’s fiduciary duties to them.”) (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff’d* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) (“The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.”) (citing 6 Del. C. § 17-211(h)).

<sup>220</sup> *See* Plan Art. IV.A.

<sup>221</sup> *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

<sup>222</sup> *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff’s partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a “double derivative” action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A “double derivative” action is a suit “brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled.”<sup>223</sup> And, under Delaware law, “parent level standing is required to enforce a subsidiary’s claim derivatively.”<sup>224</sup> Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,<sup>225</sup> it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As *Direct* Claims.

HMIT argues that it has “direct” standing to pursue the Proposed Claims on behalf of itself, individually.<sup>226</sup> But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: “a claim is not ‘direct’ simply because it is pleaded that way.”<sup>227</sup> Rather, in determining whether claims are direct or derivative, a court must “look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs’ characterization.”<sup>228</sup> And, under Delaware law, “whether a claim is solely derivative or

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*SkyPort Global Commcn’s, Inc.*), 2011 WL 111427, at \*25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders “lack standing to bring a derivative claim” under Delaware law because they “had their equity interests in the company extinguished pursuant to the merger under the Plan”); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) (“[T]he cancellation of WorldCom shares under the Plan ... prevents the required continuation of shareholder status through the litigation.”) (cleaned up).

<sup>223</sup> *Lambrecht v. O’Neal*, 3 A.3d 277, 282 (Del. 2010).

<sup>224</sup> *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

<sup>225</sup> *See supra* pp. 80-82.

<sup>226</sup> *See e.g.*, Motion for Leave ¶ 10 (“HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . .”); *id.* ¶ 67 (arguing that “HMIT has [d]irect [s]tanding”); Proposed Complaint ¶ 24 (“HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.”).

<sup>227</sup> *Schmermerhorn*, 2011 WL 111427, at \*26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at \*7 (Del. Ch. Nov. 5, 2004)).

<sup>228</sup> *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)(“The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party’s] characterization or stated intention.”)(cleaned up).

may continue as a dual-natured claim ‘must turn *solely* on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?’”<sup>229</sup> “In addition, to prove that a claim is direct, a plaintiff ‘must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.’”<sup>230</sup> Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: “[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate,” such that “only the bankruptcy trustee has standing to pursue the claim for the estate . . . .”<sup>231</sup> “To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate.”<sup>232</sup>

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, *since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims.*

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<sup>229</sup> *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

<sup>230</sup> *Id.* (quoting *Tooley*, 845 A.2d at 1033); see also *Schmermerhorn*, 2011 WL 111427, at \*24 (same).

<sup>231</sup> *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

<sup>232</sup> *Id.*; see also *Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994) (“If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.”)(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) “comes about only because of harm to the debtor,” so the alleged “injury is derivative.”<sup>233</sup> The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,<sup>234</sup> oversees the Claimant Trustee’s performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate “Litigation Trustee” in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

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<sup>233</sup> *Meridian*, 912 F.3d at 293–94 (“The creditors’ injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties.”); *see also El Paso*, 152 A.3d at 1260–61 & n.60 (holding that claim “claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative”) (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at \*12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had “not identified any independent harm suffered by the limited partners”; “the partnership suffered all the harm at issue—it paid too much”).

<sup>234</sup> *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

*C. Are the Proposed Claims “Colorable”?*

1. What is the Proper Standard of Review for a “Colorability” Determination?

Although the court has determined that HMIT would *not* have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be “colorable.” This, in turn, requires the court to assess what the legal standard is to determine if a claim is “colorable.” As a reminder, the Plan’s Gatekeeper Provision and this court’s prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are “colorable.” The Gatekeeper Provision and Gatekeeper Orders did not specifically define “colorable” or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple “plausibility” standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a *plausible* claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.<sup>235</sup> The Proposed Defendants, however, argue that the test for colorability should be more

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<sup>235</sup> Reply, ¶ 5 (“[T]he determination of ‘colorability’ does not allow the ‘weighing’ of evidence. At most, a Rule 12(b)(6) ‘plausibility’ standard applies.”).

akin to the test applied under the *Barton* doctrine,<sup>236</sup> under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is “not without foundation.” In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as “evidence” to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the “colorability” standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,<sup>237</sup> less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.<sup>238</sup> HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

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<sup>236</sup> *Barton v. Barbour*, 104 U.S. 126 (1881).

<sup>237</sup> Bankr. Dkt. Nos. 3815 and 3816.

<sup>238</sup> See June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).<sup>239</sup>

In determining what appropriate legal standard applies here in the “colorability” analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero’s post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.<sup>240</sup> This court observed that “prior to the commencement of the Debtor’s bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade” and that “[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor.”<sup>241</sup> This court further found that: (1) Dondero’s post-petition litigation “was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery’s credible testimony, that if Dondero’s plan proposal was not accepted, he would ‘burn down the place,’”<sup>242</sup> (2) without the Gatekeeper Provision in place, “Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date” and that “the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

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<sup>239</sup> See *Hunter Mountain Investment Trust’s Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* (“HMIT W&E List”)[Bankr. Dkt. No. 3818] and n.1 thereto; see also June 8 Hearing Transcript, 33:7-10.

<sup>240</sup> See Confirmation Order ¶¶ 76-79.

<sup>241</sup> *Id.* ¶ 77.

<sup>242</sup> *Id.* ¶ 78. See *supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,”<sup>243</sup> and, (3) “unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,<sup>244</sup> the absence of which will present unacceptable risks to parties currently willing to serve in such roles.” Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).<sup>245</sup>

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision “screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan’s effectiveness.”<sup>246</sup>

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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<sup>243</sup> *Id.*

<sup>244</sup> Asd noted at ¶ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor’s insurance broker (“AON”), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so *without an exclusion for claims asserted by Mr. Dondero and his affiliates* required that the Confirmation Order approve the Gatekeeper Provision.

<sup>245</sup> *Id.* ¶ 80.

<sup>246</sup> *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 435 (5th Cir. 2022).

how “colorability” should work here. It seems that applying HMIT’s proposed Rule 12(b)(6) “plausibility” standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the “colorability” of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor’s implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges<sup>247</sup>—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan’s Gatekeeper Provision, the Fifth Circuit stated, “Courts have long recognized bankruptcy courts can perform a gatekeeping function” and noted, by way of example, that “[u]nder the ‘*Barton* doctrine,’ the bankruptcy court may require a party to ‘obtain leave of

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<sup>247</sup> See *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has “a colorable claim to vested benefits” such that the employee may be considered a “participant” under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting “claimants [with] no colorable legal claim” to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant’s double jeopardy claim was “colorable” such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at \*3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a “colorable claim” against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at \*3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a “colorable claim” to warrant the district court’s exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at \*5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at \*5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a “colorable constitutional claim” such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor’s official capacity.”<sup>248</sup> As noted above, the Fifth Circuit found that the Gatekeeper Provision, which “requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court’s approval of the claim as ‘colorable’”—*i.e.*, to “screen and prevent bad-faith litigation,”—is “sound.”<sup>249</sup>

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the “colorability” standard under gatekeeping provisions in a plan<sup>250</sup>—as more informative on how to approach “colorability” than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.<sup>251</sup>

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, “[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation,” and emphasized that the “not without foundation” standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, “involves a greater degree of flexibility” than a Rule 12(b)(6) motion to dismiss because “the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit,” and “is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor’s estate.”<sup>252</sup> To satisfy the “*prima facie* case standard,” “the movant must do more than meet the liberal notice-pleading

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<sup>248</sup> *Id.* at 438 (cleaned up).

<sup>249</sup> *Id.* at 435.

<sup>250</sup> The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the “appointing” court of Seery.

<sup>251</sup> 678 F.3d 218 (3d Cir. 2012).

<sup>252</sup> *Id.* at 232-233 (cleaned up).

requirements of Rule 8.”<sup>253</sup> “[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless.”<sup>254</sup> This court agrees with the notion, that “[t]o apply a less stringent standard would eviscerate the protections” of the Gatekeeper Provision and Gatekeeper Orders.<sup>255</sup> The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that “[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,”<sup>256</sup> and that “the decision whether to grant leave may involve a ‘balancing of the interests of all parties involved,’” which will ordinarily require an evidentiary hearing.<sup>257</sup> The Third Circuit applied “the deferential abuse of discretion standard” in considering whether the bankruptcy court’s granting of leave should be affirmed on appeal.<sup>258</sup>

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<sup>253</sup> *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

<sup>254</sup> *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at \*2 (N.D. Ill. Nov. 30, 2000).

<sup>255</sup> *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at \*2).

<sup>256</sup> *VistaCare*, 678 F.3d at 232 n.12.

<sup>257</sup> *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court’s holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

<sup>258</sup> *Id.* at 224 (“We review a bankruptcy court’s decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.”) (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court’s decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. See *In re Bednar*, 2021 WL 1625399, at \*3 (B.A.P. 10th Cir. Apr. 27, 2021) (“[T]he Bankruptcy Court’s decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .”) (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App’x 969, 973–74 (11th Cir. 2016) (“Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court’s ruling on a *Barton* motion for an abuse of discretion.”) (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at \*3 (B.A.P. 1st Cir. Sept. 17, 2014) (“Appellate courts review a bankruptcy court’s decision to deny a motion for leave to sue under the abuse of discretion standard.”) (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court’s conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.<sup>259</sup>

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to “show that the claims sought to be asserted have sufficient merit,” including that “the proposed filing is both procedural and legally sound,” and “that the claims are not brought for any improper purpose, such as harassment.”<sup>260</sup> “For a prefiling injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review,” such as the “plausibility” standard for a Rule 12(b)(6) motion.<sup>261</sup> Rather, courts apply “an additional layer of review,” and “may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action” or that the “litigant’s allegations are unlikely,” especially “when prior cases have shown the litigant to be untrustworthy or not credible . . . .”<sup>262</sup>

In summary, the court rejects HMIT’s positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are “plausible” under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT’s argument that this court is not permitted to consider evidence in making its “colorability” determination is completely contradictory to HMIT’s actions in filing the Motion

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<sup>259</sup> See *Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at \*4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after “a close examination” by the bankruptcy court of the evidence regarding the trustee’s actions and finding that “the plaintiffs’ allegations are not based in fact”), *aff’d* 799 F. App’x 271 (5th Cir. 2020).

<sup>260</sup> *Silver v. City of San Antonio*, 2020 WL 3803922, at \*1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); see also *Silver v. Perez*, 2020 WL 3790489, at \*1 (W.D. Tex. July 7, 2020) (same).

<sup>261</sup> *Silver*, 2020 WL 3803922, at \*6.

<sup>262</sup> *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of “objective evidence” that “supported” its motion.

The court concludes that the appropriate standard to be applied in making its “colorability” determination in *this* bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in *this* Plan, is a broader standard than the “plausibility” standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves *an additional level of review*—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are *not without foundation*, are *not without merit*, and are *not being pursued for any improper purpose such as harassment*. Additionally, this court may, and should, take into consideration its *knowledge* of the *bankruptcy proceedings* and *the parties* and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of “colorability” as the “Gatekeeper Colorability Test.” The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT’s Proposed Complaint Does Not Present “Colorable” Claims Under this Court’s Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) “Plausibility” Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not “colorable” claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT’s Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

“plausibility” standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT’s “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” fail to “[c]ross the line from conceivable to plausible.”<sup>263</sup>

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery’s breach of fiduciary duties and the Claims Purchasers’ conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are “colorable”—or even merely plausible.

a) HMIT’s Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT’s Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a “colorable” breach of fiduciary duties claim against Seery, under this court’s Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) “[b]y disclosing material non-public information to Stonehill and Farallon”

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<sup>263</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving “compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021.”<sup>264</sup>

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the “Internal Affairs Doctrine.”<sup>265</sup> Under Delaware law, “[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege ‘(1) that a fiduciary duty existed and (2) that the defendant breached that duty.’”<sup>266</sup> HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.<sup>267</sup> Because Seery did not owe any “duty” to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT’s “legal conclusion[.]” that Seery “owed fiduciary duties to HMIT, as equity, and to the Debtor’s Estate”<sup>268</sup> “do[es] not suffice” to plausibly allege the existence of any actionable fiduciary relationship.<sup>269</sup> And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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<sup>264</sup> Proposed Complaint ¶¶ 64–67.

<sup>265</sup> Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

<sup>266</sup> *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at \*30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at \*8 (Del. Ch. Feb. 28, 2020)).

<sup>267</sup> *See Gilbert v El Paso Co.*, 1988 WL 124325, at \*9 (Del. Ch. Nov. 21, 1988) (“[D]irectors’ fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.”) *aff’d*, 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at \*11 (Del. Ch. Nov. 7, 2013) (same).

<sup>268</sup> Proposed Complaint ¶ 63.

<sup>269</sup> *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery’s alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery “disclose[d] material non-public information to Stonehill and Farallon,” and they “acted on inside information and Seery’s secret assurances of great profits.”<sup>270</sup> But the Proposed Complaint does not make any factual allegations regarding HMIT’s “conclusory allegations,” and its “legal conclusions” are “purely speculative, devoid of factual support,” and therefore “stop[] short of the line between possibility and plausibility of entitlement to relief”<sup>271</sup> (and certainly stop short of being “colorable”). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what “assurances of great profits” he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he *believed* that Seery *must have* communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon’s purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that “made [any] sense.” Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery’s post-Effective Date compensation had or had not been negotiated in an arms’ length transaction. Dondero only

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<sup>270</sup> Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

<sup>271</sup> *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it “made no sense” to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland’s court-approved Disclosure Statement.<sup>272</sup> The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phone calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over \$33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of \$113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT’s Proposed Complaint was the MGM Email Dondero sent to Seery containing “information regarding Amazon and Apple’s interest in acquiring MGM.” But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.<sup>273</sup> Moreover, the evidence showed that Dondero *did not* communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM—which was that Amazon had met MGM’s “strike price” and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

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<sup>272</sup> Proposed Complaint ¶¶ 3, 37, 42.

<sup>273</sup> See, e.g., *SEC v. Cuban*, 2013 WL 791405, at \*10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not “material, nonpublic information” and “becomes public when disclosed to achieve a broad dissemination to the investing public”) (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"<sup>274</sup> the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.<sup>275</sup>

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint<sup>276</sup> and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.<sup>277</sup> Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.<sup>278</sup> HMIT's conspiracy cause of action against the Claims

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<sup>274</sup> Proposed Complaint ¶¶ 4, 13, 54, 74.

<sup>275</sup> See *Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]lthough the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

<sup>276</sup> Proposed Complaint ¶¶ 69-74.

<sup>277</sup> Proposed Complaint ¶¶ 75-81.

<sup>278</sup> See *Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of “internal affairs” or of corporate governance, so it is governed by Texas law under the Plan.<sup>279</sup>

As an initial matter, because HMIT does not present either a “colorable”—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a “colorable” or plausible claim for secondary liability for the same alleged wrongdoing.<sup>280</sup> In addition, HMIT’s civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero’s speculation and unsupported inferences and, thus, HMIT has not “colorably” alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, “civil conspiracy is a theory of vicarious liability and not an independent tort.”<sup>281</sup> “[T]he elements of civil conspiracy [are] “(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result.”<sup>282</sup> While HMIT alleges that “Defendants conspired with each other to unlawfully breach fiduciary duties,”<sup>283</sup> it is simply a “legal conclusion” and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.<sup>284</sup>

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<sup>279</sup> *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to “the rights and obligations arising under this Plan” except for “corporate governance matters.”)

<sup>280</sup> *See English v. Narang*, 2019 WL 1300855, at \*14 (Del. Ch. Mar. 20, 2019) (“As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.”) (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at \*10 (Tex. App. Jan. 25, 2022) (“[A] defendant’s liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.”) (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT’s breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, “conspiracy is not an internal affair” or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

<sup>281</sup> *Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

<sup>282</sup> *Id.* at 141 (cleaned up).

<sup>283</sup> Proposed Complaint ¶ 76.

<sup>284</sup> *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a “as a *quid pro quo*” for “additional compensation,”<sup>285</sup> each time based upon conclusory allegations based “upon information and belief” and, frankly, pure speculation from Dondero that his imagined “scheme,” “covert *quid pro quo*,” and secret “conspiracy” between Seery, on the one hand, and Farallon and Stonehill, on the other,<sup>286</sup> **must have** occurred because “[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk” (i.e., “[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery’s assurance of great profits.”)<sup>287</sup> Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.<sup>288</sup> HMIT’s allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero’s speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.<sup>289</sup> Thus, HMIT cannot meet

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<sup>285</sup> Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

<sup>286</sup> *See id.* ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”).

<sup>287</sup> *Id.*

<sup>288</sup> *See, e.g., id.* ¶ 3 (alleging that acquiring the claims “did not offer a **sufficient** potential profit to justify the publicly disclosed risk”)(emphasis added); ¶ 43 (“Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . .”); ¶ 49 (“Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any significant* profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.”) (third emphasis added).

<sup>289</sup> In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data **he** (or entities he controls or controlled) would rely on, what **his** risk tolerance would have been, and what level of potential profits **he** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint’s statement that it would have been “*impossible* for Stonehill and Farallon (in the absence of insider information) to forecast *any* significant profit at the time of their multi-million-dollar investments,” the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, “at the time of their multi-million-dollar investments” was publicly available information.<sup>290</sup> HMIT’s suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT’s allegation that “[u]pon information and belief” Farallon “conducted no due diligence but relied on Seery’s profit guarantees” plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero’s speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT’s allegations in the Proposed Complaint that *Farallon* “conducted no due diligence,” are based on Dondero’s speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

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<sup>290</sup> The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months *after* the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.<sup>291</sup> In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.<sup>292</sup> The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

- c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint
  - i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."<sup>293</sup> As noted above, these remedies are not available to HMIT.<sup>294</sup>

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

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<sup>291</sup> See June 8 Hearing Transcript, 239:6-21.

<sup>292</sup> See *id.*, 310:19-312:2.

<sup>293</sup> Proposed Complaint ¶¶ 83-87.

<sup>294</sup> See *infra* pages 74-75.

subordination of a *claim to other claims* or an *interest to other interests* but does not permit equitable subordination of a *claim to interests*.

Second, “equitable” disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.<sup>295</sup>

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following a *contest* (which is certainly the case with respect to the Purchased Claims) based on the “equities of the case.” But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT’s request for disallowance of Muck and Jessup’s Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, “by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity” and that “[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;” thus, HMIT alleges, the Claims Purchasers “should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment” and “a constructive trust should be imposed on such proceeds . . . .”<sup>296</sup>

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<sup>295</sup> *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

<sup>296</sup> Proposed Complaint ¶¶ 89-93.

HMIT alleges further that “Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restate all compensation he has received from the outset of his collusive activities” and “[a]lternatively he should be required to disgorge and restate all compensation received since the Effective Date” over which a constructive trust should be imposed.<sup>297</sup> HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,<sup>298</sup> “[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay.”<sup>299</sup> Thus, “when a valid, express contract covers the subject matter of the parties’ dispute, there can be no recovery under a quasi-contract theory.”<sup>300</sup> Here, as noted above, HMIT’s only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery’s allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery’s compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT’s claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero’s conspiracy theory is correct and that HMIT’s would succeed on the merits with respect

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<sup>297</sup> *Id.* ¶ 94.

<sup>298</sup> Under the Plan, Texas law governs HMIT’s “claim” for unjust enrichment because it is not a “corporate governance matter.” (Plan Art. XII.M.) It also governs HMIT’s “claim” for constructive trust, which “is merely a remedy used to grant relief on the underlying cause of action.” *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

<sup>299</sup> *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

<sup>300</sup> *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.<sup>301</sup> But, a request for declaratory relief is not “an independent cause of action”<sup>302</sup> and “in the absence of any underlying viable claims such relief is unavailable.”<sup>303</sup> This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero’s vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers’ and Seery’s “misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others,” thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery’s alleged breach of his fiduciary duties. And under Delaware law, the “court cannot award punitive damages in [a] fiduciary duty action.”<sup>304</sup>

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<sup>301</sup> Proposed Complaint ¶¶ 96-99.

<sup>302</sup> See *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

<sup>303</sup> *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at \*2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); see also *Hopkins v. Cornerstone Am.*

<sup>304</sup> *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff’d* 682 F. App’x 24 (2d Cir. 2017).

3. HMIT Does Not Present “Colorable” Claims Under this Court’s Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court’s Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court’s knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT’s Motion for Leave should be denied.

#### **IV. CONCLUSION**

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT’s Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are “colorable” claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

**IT IS ORDERED** that HMIT's Motion for Leave be, and hereby is **DENIED**.

**###End of Memorandum Opinion and Order###**

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	

**HUNTER MOUNTAIN INVESTMENT TRUST’S MOTION TO  
ALTER OR AMEND ORDER, TO AMEND OR MAKE ADDITIONAL FINDINGS, FOR  
RELIEF FROM ORDER, OR, ALTERNATIVELY, FOR NEW TRIAL UNDER  
FEDERAL RULES OF BANKRUPTCY PROCEDURE 7052, 9023, AND 9024 AND  
INCORPORATED BRIEF**

Hunter Mountain Investment Trust (“HMIT”), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P. (“HCM” or “Debtor”) and the Highland Claimant Trust,<sup>1</sup> files this Motion to Alter or Amend Order, to

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<sup>1</sup> And, in all capacities and alternative derivative capacities asserted in the Emergency Motion (as defined herein) [Bankr. Dkt. Nos. 3699, 3815, and 3816], and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

Amend or Make Additional Findings, for Relief from Order,<sup>2</sup> or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief (the “Motion”), and respectfully states as follows:

1. HMIT filed an Emergency Motion for Leave to File Verified Adversary Proceeding (“Emergency Motion”) [Bankr. Dkt. Nos. 3699, 3815, and 3816], which was supplemented on April 23, 2023 [Bankr. Dkt. No. 3760]. By way of its Emergency Motion, HMIT sought leave to file an Adversary Proceeding pursuant to the Court’s gatekeeping order and the injunction and exculpation provisions in the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Bankr. Dkt. 1943], as modified (the “Plan”).

2. A hearing on the Emergency Motion was held on June 8, 2023. On August 25, 2023, the Court issued its Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”: Denying Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding (the “Order”) [Bankr. Dkt. Nos. 3903 and 3904]. In the Order, among other things, the Court concluded that HMIT lacked standing to bring the proposed claims and therefore denied the Emergency Motion. Specifically, the Court found that “HMIT’s allegations of injury are, without a doubt, ‘merely conjectural or hypothetical’ and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests.” [Bankr. Dkt. No. 3903 at 72].

3. This Motion seeks alteration of, or a new trial to re-consider, these and associated findings and conclusions relating to standing, because post-hearing financial disclosure filings in

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<sup>2</sup> The “Order” refers to this Court’s Order Denying HMIT’s Emergency Motion for Leave to File Adversary Proceeding. [Bankr. Dkt. Nos. 3903, 3904].

the bankruptcy matter further evidence that the Court’s standing determinations are incorrect and should be corrected.<sup>3</sup>

4. On July 6, 2023, while the Emergency Motion was pending, the Debtor and the Highland Claimant Trust filed a Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, showing the “general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.” [Bankr. Dkt. No. 3872; a copy of which is attached as Exhibit 1 to this Motion]. And on July 21, 2023, the Debtor filed its Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 [Bankr. Dkt. No. 3888; a copy of which is attached as Exhibit 2 to this Motion] and the Highland Claimant Trust filed its Post-Confirmation Report for Highland Capital Management, LP for the Quarter Ending June 30, 2023 [Bankr. Dkt. No. 3889; a copy of which is attached as Exhibit 3 to this Motion].

5. As explained below, these financial documents further demonstrate that HMIT’s alleged injuries are not “conjectural or hypothetical,” and, instead, demonstrate that its Contingent Claimant Trust Interest will vest, or put colloquially, it is “in the money.” Stated otherwise, the financial documents further establish HMIT’s standing and alleged non-speculative injury.

6. In support of this request, HMIT points the Court to the financial disclosures, which further demonstrates that HMIT is now “in the money.”

---

<sup>3</sup> HMIT contests and disagrees with other adverse rulings in the Court’s order, including but not limited to (1) the Court’s determination that the “colorability” question presents “mixed questions of law and fact” and its associated decision to hold an evidentiary hearing; (2) the Court’s holding an evidentiary hearing without allowing HMIT to obtain discovery and/or admit expert testimony, and (3) the Court’s determination that HMIT’s claims are not “colorable” for reasons other than standing. HMIT intends to raise these and other issues on appeal and HMIT reserves its rights accordingly. [See, e.g., Bankr. Dkt. Nos. 3790, 3853, 3903-04].

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**  
**The accompanying notes are integral to understanding this balance sheet**  
**(Estimated and unaudited, \$ in millions)**

	Balance per books	adjustments (see notes)	Adjusted balance
<b>Assets</b>			
Cash and equivalents	\$ 13	\$ -	\$ 13
Disputed claims reserve <sup>(2)</sup>	12	-	12
Other restricted cash	12	-	12
Investments <sup>(3)</sup>	118	(12) <sup>(4)</sup>	106
Notes receivable, net <sup>(4)</sup>	86	(83) <sup>(4)</sup>	3
Other assets	6	-	6
<b>Total assets</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Liabilities</b>			
Secured and other debt	\$ -	\$ -	\$ -
Distribution payable <sup>(2)</sup>	12	-	12
Additional indemnification reserves	-	90 <sup>(5)</sup>	90
Other liabilities	15	13 <sup>(5)</sup>	28
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 27</b>	<b>\$ 103</b>	<b>\$ 130</b>
<b>Book/adjusted book equity (see accompanying notes) <sup>(5)</sup></b>	<b>220</b>	<b>(198)</b>	<b>22</b>
<b>Total liabilities and book/adjusted book equity</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Supplemental Info: <sup>(7)</sup></b>			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	\$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	\$ 139		

[See Exhibit 1, Bankr. Dkt. 3872, at Ex. A].

7. As this balance sheet demonstrates, even without pursuing the *Kirschner* Adversary, the Claimant Trust has \$247 million in assets and \$139 million in Class 8 and 9 claims. Moreover, the Claimant Trust’s balance sheet assets do not include a fully cash-funded \$35 million indemnity account that presumably may be used to pay creditors in the event it is not consumed by the indemnity-related expenses. [See Exhibit 1, Bankr. Dkt. 3872 at Ex. A, n. 1]. While the balance sheet includes “non-book” adjustments, they do not change HMIT’s “in the money” status. One adjustment gives zero asset value to the notes payable by affiliates of Jim Dondero. [See *id.* at Ex. A]. However, \$70 million of those notes are (or shortly will be) fully bonded by cash deposited in the registry of the district court. See N.D. Tex. Case No. 3:31-cv-00881-X, Dkt. Nos. 149, 151, and 152. Another “adjustment” creates a \$90 million “additional indemnification reserve,” on top of the \$35 million cash indemnity reserve. [See Exhibit 1, Bankr.

Dkt. 3872 at Ex. A]. It is unlikely, however, that these extensive indemnity reserves will ever be expended or necessary for indemnity.<sup>4</sup> Additionally, as the Post-Confirmation reports reveal, all of the administrative claims, secured claims, and priority claims have been paid in full. [Exhibit 2, Bankr. Dkt. No. 3888, and Exhibit 3, Bankr. Dkt. No. 3889].

8. For all these reasons, HMIT is “in the money” under Claimant Trust’s recently disclosed balance sheet and disclosures.<sup>5</sup> Moreover, as this Court noted in a prior unrelated matter, HMIT must only show “significant indicia of solvency” to have standing. *See In re ADPT DFW Holdings, LLC*, Bankr. N.D. Tex. Case No. 17-31432, Dkt. No. 303 at Hrg. Trans. 131:22 – 132:6. HMIT has made the showing and, this showing is further evidenced by the Claimant Trust’s own unadjusted balance sheet.

9. HMIT, along with the other Contingent Trust Interest holders are, as discussed above, “in the money.” In other words, HMIT has both constitutional and prudential standing to bring its asserted claims.

10. For the foregoing reasons, HMIT has standing and a cognizable injury to support the claims in its Emergency Motion. Thus, pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024, HMIT requests that the Court alter or amend its findings and judgment that HMIT lacks standing or a cognizable alleged injury. Alternatively, HMIT requests that the

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<sup>4</sup> Per the Plan, any indemnity is limited to fees and expenses, as no indemnity right would lie for a judgment entered on a claim for which a plaintiff could assert or recover under the gatekeeper order and applicable law. Nor is it likely that the Claimant Trust will incur even close to the reserved amounts for fees and expenses. For the bankruptcy case as a whole, for example, the debtor’s bankruptcy and non-bankruptcy professional fees and expenses totaled only approximately \$40 million, pre-confirmation. [Exhibits 2, 3; Bankr. Dkt. Nos. 3888, 3889]. Also, as is clear from the Motion and Order authorizing the creation of the Indemnity Trust Agreement, the projected indemnity reserve was contemplated to be \$25 Million, so the cash amount apparently set aside for indemnification amounts to \$100 Million more than contemplated. [Bankr. Dkt. Nos. 2491, 2599, attached as Exhibits 4-5].

<sup>5</sup> [See Exhibits 1 – 3, Bankr. Dkt. Nos. 3888, 3889].

Court grant a new trial or hearing pursuant to Federal Rule of Bankruptcy Procedure 9023 due to the impact of the financial documents on HMIT's standing and ability to assert the claims.

### **PRAYER**

HMIT respectfully requests that the Court grant this Motion and alter or amend its findings or Order to rule that HMIT has constitutional and prudential standing and a cognizable injury or, alternatively, order a new trial/hearing.

Dated: September 8, 2023

Respectfully Submitted,

PARSONS MCENTIRE MCCLEARY PLLC

By: /s/ Sawnie A. McEntire

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Facsimile: (713) 960-7347

***Attorneys for Hunter Mountain Investment  
Trust***

### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that the undersigned conferred with John Morris, counsel for Debtor and the Highland Claimant Trust, and that, while Mr. Morris' clients oppose the relief requested in this motion, Mr. Morris and his clients have no objection to the making of this motion (*i.e.*, Mr. Morris and his clients agreed that this motion is not precluded by the stay in place or other order of the Court).

/s/ Sawnie A. McEntire  
Sawnie A. McEntire

The undersigned hereby certifies that the undersigned conferred with Mr. Brent McIlwain, counsel for Respondents Muck Holdings, LLC ("Muck"), Jessup Holdings LLC ("Jessup"), Farallon Capital Management, L.L.C. ("Farallon"), and Stonehill Capital Management LLC ("Stonehill," and collectively, with Muck, Jessup, and Farallon, the "Claims Purchasers"), and Mr. Mark T. Stancil, counsel for Respondent James P. Seery, Jr., and that, while Mr. McIlwain and Mr. Stancil's clients oppose the relief requested in this motion, Mr. McIlwain and Mr. Stancil and their respective clients have no objection to the making of this motion (*i.e.*, they also agree that this motion it is not precluded by the stay in place or other order of the Court).

/s/ Roger L. McCleary  
Roger L. McCleary

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 8, 2023, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof.

/s/ Sawnie A. McEntire  
Sawnie A. McEntire

# Exhibit 1

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
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HAYWARD PLLC  
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Facsimile: (972) 755-7110

*Counsel for the Reorganized Debtor and the Highland Claimant Trust*

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

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In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	

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**NOTICE OF FILING OF  
THE CURRENT BALANCE SHEET OF THE HIGHLAND CLAIMANT TRUST**

**PLEASE TAKE NOTICE** that, pursuant to the Court’s *Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing [Docket No. 3870]*, Highland Capital Management, L.P., the reorganized debtor in the above-captioned bankruptcy case, and the Highland Claimant Trust hereby file the

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<sup>1</sup> The last four digits of the Reorganized Debtor’s taxpayer identification number are 8357. The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

current balance sheet attached hereto as **Exhibit A** showing the general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.

*[Remainder of Page Intentionally Left Blank]*

Dated: July 6, 2023

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 2405397)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for the Reorganized Debtor and  
the Highland Claimant Trust*

## EXHIBIT A

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**

The accompanying notes are integral to understanding this balance sheet  
 (Estimated and unaudited, \$ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
<b>Assets</b>			
Cash and equivalents	\$ 13	\$ -	\$ 13
Disputed claims reserve <sup>(2)</sup>	12	-	12
Other restricted cash	12	-	12
Investments <sup>(3)</sup>	118	(12) <sup>(6)</sup>	106
Notes receivable, net <sup>(4)</sup>	86	(83) <sup>(4)</sup>	3
Other assets	6	-	6
<b>Total assets</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Liabilities</b>			
Secured and other debt	\$ -	\$ -	\$ -
Distribution payable <sup>(2)</sup>	12	-	12
Additional indemnification reserves	-	90 <sup>(5)</sup>	90
Other liabilities	15	13 <sup>(5)</sup>	28
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 27</b>	<b>\$ 103</b>	<b>\$ 130</b>
<b>Book/adjusted book equity (see accompanying notes) <sup>(5)</sup></b>	<b>220</b>	<b>(198)</b>	<b>22</b>
<b>Total liabilities and book/adjusted book equity</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
 <b>Supplemental Info: <sup>(7)</sup></b>			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	\$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	\$ 139		

**{SEE ACCOMPANYING NOTES ON THE FOLLOWING PAGE}**

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**

**Notes:**

(1) This presentation is not in accordance with US GAAP and is unaudited, but has nevertheless been prepared in good faith and with the intention of providing the reader with a comprehensive understanding of the remaining assets and liabilities of the Highland Claimant Trust, Highland Capital Management, LP, HCMLP GP LLC, and Highland Litigation Trust (the "Consolidated Entities"). These entities have each been aggregated on a stand-alone basis, with intercompany amounts eliminated. Funds and entities that may otherwise be consolidated by one or more of the Consolidated Entities under US GAAP are not fully consolidated and rather are included solely at their equity value. For example, if Highland Capital Management, LP is a 20% investor in a managed fund with assets of \$100 million and liabilities of zero that would normally require consolidation under US GAAP, the presentation contained herein reflects an investment of \$20 million as opposed to fully consolidating the \$100 million fund and reflecting minority interest of \$80 million. The value of the Highland Indemnity Trust is not included herein. As of May 31, 2023, \$35 million has been funded to the Highland Indemnity Trust. Highland Indemnity Trust beneficiaries are Claimant Trust Indemnified Parties. Any unused assets remaining after satisfying indemnification obligations will be transferred to the Highland Claimant Trust or otherwise be distributed to the Claimant Trust Beneficiaries in accordance with the Indemnity Trust Agreement. For presentation purposes, it is assumed that outstanding indemnification obligations will consume the entirety of the Highland Indemnity Trust. Further, no current recovery amount has been ascribed to the "Kirschner Adversary" as all such value is considered to be contingent, nor have any liabilities been reserved for various success fees payable to professionals associated with the Kirschner Adversary or any other litigations. Such liabilities are also contingent in nature.

(2) Amounts already authorized for distribution, but reserved in the Disputed Claims Reserve related to resolution of pending disputed claims.

(3) Value reflected herein consists primarily of ownership in private funds and subsidiaries, valued using NAV as the practical expedient, public & private investments (including residual sale escrows), valued at fair value, and SE Multifamily Holdings, LLC, valued using book equity value as of the most recent financials received. See note 6 for further information. There is substantial risk and uncertainty with respect to the timing and ultimate cash value to be received from monetizations of these investments and such value could ultimately be materially impacted by actual monetizations.

(4) Book amounts reflect principal amounts outstanding on various notes, without discount, adjustment, or estimates of future costs of collection, with two exceptions. The first exception is to the note receivable from Hunter Mountain Investment Trust for which over \$90 million of principal and interest is currently due, payable, and in default. These notes are a component of the "Kirschner Adversary" which is currently stayed. These principal and interest amounts are fully reserved based on the assumption that Hunter Mountain Investment Trust has no other assets other than a contingent, unvested interest in the Highland Claimant Trust. That assumption is subject to change. The second exception relates to the note receivable from Highland Select Equity Master Fund, LP. This amount is fully reserved based on the pendency of the Ch. 7 proceeding for Highland Select Equity Master Fund, LP and the minimal remaining value of Highland Select Equity Master Fund, LP's assets, which is expected to be further consumed (at least in part) by trustee and professional fees. Aside from these exceptions, approximately \$65 million of these principal amounts (further described below) are subject to ongoing litigation with various note counterparties who are contesting the validity of their obligations. These disputed amounts are contained within the "Balance per books" column herein without discount or adjustment. While the makers have asserted defenses, Highland believes they are meritless and is confident that judgments will ultimately be entered in Highland's favor. However, based on Mr. Dondero's history of failing to satisfy judgments entered against his affiliates by others (e.g., UBS, the Redeemer Committee, Joshua Terry, and Patrick Daugherty), the effect of complete non-payment of principal is reflected in the "adjustments" column, which also assumes non-payment of the currently performing \$18 million note receivable from The Dugaboy Investment Trust. Ultimate recoveries from these notes could differ materially from the current principal outstanding depending on the outcome of the pending litigation and no recovery can be assured. Accrued interest is captured in the "Other assets" line item, subject to the exceptions discussed within this footnote. While there is currently a report & recommendation from the bankruptcy court for summary judgment, plus costs of collection, no costs of collection are reflected as assets on this balance sheet, so would be incremental. The estimated amount of such costs of collections are over \$3 million.

Detail of note principal amounts subject to report & recommendations of the bankruptcy court, currently pending in district court (excludes accrued interest):

Note Maker	Principal O/S	Comments
NexPoint Advisors, LP	\$ 25	Consists of a single note
NexPoint Real Estate Partners, LLC	12	fka HCRE Partners, LLC; five underlying notes comprise balance
NexPoint Asset Management, LP	11	fka Highland Capital Management Fund Advisors, LP; four underlying notes comprise balance
James Dondero	10	Three underlying notes comprise balance
Highland Capital Management Services, Inc.	7	Five underlying notes comprise balance
Sub-total	\$ 65	

(5) The book equity amount reflects a multitude of estimates including, but not limited to the value of investments and collectability of notes receivable. For book purposes, no contingent liabilities or indemnification reserves have been recorded as liabilities that would reduce book equity, notwithstanding that it is currently expected that there will be a) a need to maintain further highly material indemnification reserves; and b) further incurrence of springing contingent liabilities if distribution milestones are achieved. The amount of further incremental indemnification reserves are currently expected to exceed \$90 million, and may ultimately be greater, which will be required to be funded (at least in part) prior to any further material distributions to Trust Beneficiaries. In the absence of a global settlement that, among other things, fully and finally releases all Claimant Trust Indemnified Parties, Highland believes the additional indemnification reserves are required because, among other reasons, (a) based on the so-called "Dondero exclusion," insurance is likely to remain cost-prohibitive and/or unsatisfactory, leaving the Claimant Trust and Indemnity Trust assets as the sole sources of funding for indemnity obligations, (b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected. Any unused assets remaining after satisfaction of indemnity obligations will be distributed as required by the Indemnity Trust Agreement. The amount of incremental springing contingent liabilities are expected to range from \$5 million to \$15 million, which are exclusive of various success fees associated with recoveries under the "Kirschner Adversary" and others. No reserves have been accrued for any current, pending, or threatened litigation brought by any Dondero-related parties. Lastly, it is expected that the trust and its subsidiaries will operate at an operating loss prospectively. The corresponding information in the "adjustments" column above is an estimate of the effects of these incremental indemnification reserves and contingent liabilities, but does not assume any expected future operating cash burn, which is expected to be significant.

(6) The value of SE Multifamily Holdings LLC maintained on this balance sheet is \$15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of \$20 million and \$12 million, Highland also received interest from Dondero to acquire the interest for \$3.8 million, among other assets. The purpose of this adjustment is to assume that the holding could be monetized at the lower \$3.8 million level, which would result in a \$11.9 million decrease to Highland's book equity if it were hypothetically transacted at that level. Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero-controlled entities have not provided to date.

(7) Amounts described herein represent the face amounts of outstanding allowed and pending claims. The pending claim amounts do not include amounts that are the subject of various appeals or that are unliquidated. The allowed and pending claims (along with accrued interest) could ultimately be satisfied in part or in full using 1) the assets of the disputed claims reserve, 2) the residual amount of cash in the indemnity trust after satisfying all indemnification obligations, and 3) the residual amount of cash remaining after monetizing all other non-cash assets and paying liabilities and future expenses.

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

# Exhibit 2

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP

Case No. 19-34054

Debtor(s)

§  
§  
§  
§

Jointly Administered

Post-confirmation Report

Chapter 11

Quarter Ending Date: 06/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:  Reorganized Debtor

Other Authorized Party or Entity:

Name of Authorized Party or Entity

/s/ Zachery Z. Annable

Signature of Responsible Party

07/21/2023

Date

Zachery Z. Annable, Hayward PLLC

Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106

Dallas TX 75231

Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

**Part 1: Summary of Post-confirmation Transfers**

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	\$6,894,640	\$122,318,601
b. Non-cash securities transferred	\$0	\$0
c. Other non-cash property transferred	\$0	\$5,194,652
d. Total transferred (a+b+c)	\$6,894,640	\$127,513,253

**Part 2: Preconfirmation Professional Fees and Expenses**

a.			Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor <i>Aggregate Total</i>			\$0	\$33,005,136	\$0
<i>Itemized Breakdown by Firm</i>						
	Firm Name	Role				
i	Pachulski Stang Ziehl & Jones	Lead Counsel	\$0	\$24,312,860	\$0	\$24,312,860
ii	Development Specialists, Inc.	Financial Professional	\$0	\$5,765,448	\$0	\$5,765,448
iii	Kurtzman Carson Consultants	Other	\$0	\$2,054,716	\$0	\$2,054,716
iv	Hayward & Associates PLLC	Local Counsel	\$0	\$872,112	\$0	\$872,112
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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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			Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative	
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor		\$0	\$7,604,472	\$0	\$7,604,472	
	<i>Aggregate Total</i>						
	<i>Itemized Breakdown by Firm</i>						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	\$0	\$1,149,807	\$0	\$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	\$0	\$629,088	\$0	\$629,088
	iii	Deloitte	Financial Professional	\$0	\$553,413	\$0	\$553,413
	iv	Mercer (US) Inc.	Other	\$0	\$204,767	\$0	\$204,767
v	Teneo Capital, LLC	Financial Professional	\$0	\$1,364,823	\$0	\$1,364,823	
vi	Wilmer Cutler Pickering Hale	Other	\$0	\$2,650,937	\$0	\$2,650,937	

Debtor's Name Highland Capital Management, LP

Case No. 19-34054

vii	Carey Olsen	Other	\$0	\$280,264	\$0	\$280,264
viii	ASW Law	Other	\$0	\$4,976	\$0	\$4,976
ix	Houlihan Lokey Financial Adv	Other	\$0	\$766,397	\$0	\$766,397
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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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c.	All professional fees and expenses (debtor & committees)	\$0	\$60,171,929	\$0	\$60,171,929

**Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	\$0	\$0	\$15,750	\$15,750	100%
b. Secured claims	\$5,843,261	\$0	\$5,274,477	\$5,274,477	100%
c. Priority claims	\$16,498	\$0	\$1,213,832	\$1,213,832	100%
d. General unsecured claims	\$205,144,544	\$0	\$270,205,592	\$397,485,568	68%
e. Equity interests	\$0	\$0	\$0		

**Part 4: Questionnaire**

- a. Is this a final report? Yes  No
- If yes, give date Final Decree was entered: \_\_\_\_\_
- If no, give date when the application for Final Decree is anticipated: \_\_\_\_\_
- b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes  No

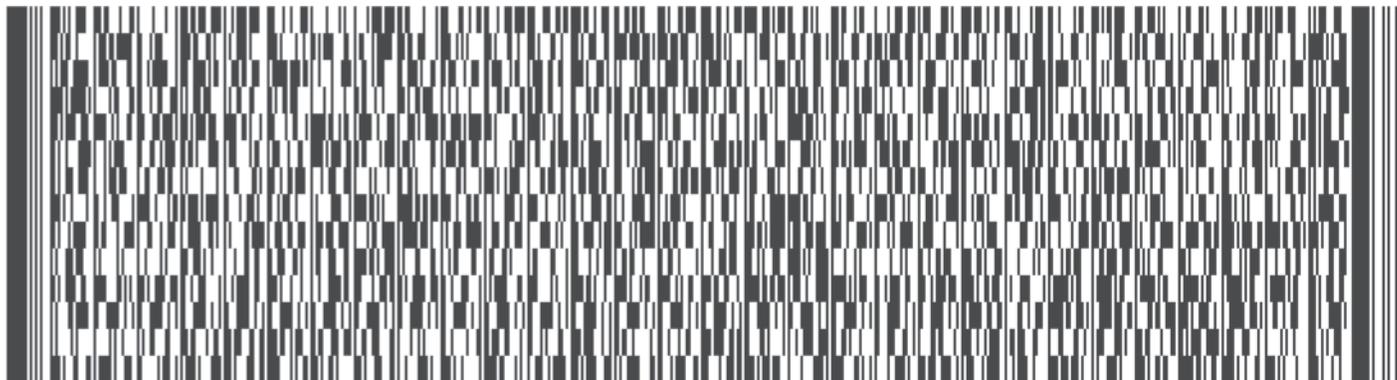
**Privacy Act Statement**

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." See 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: [http://www.justice.gov/ust/eo/rules\\_regulations/index.htm](http://www.justice.gov/ust/eo/rules_regulations/index.htm). Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

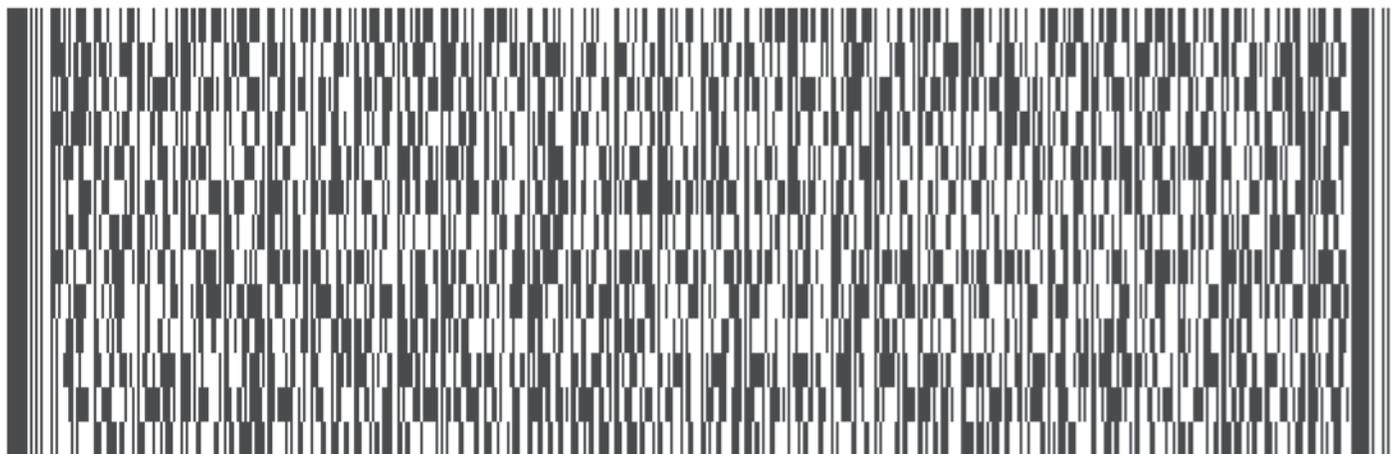
**I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.**

/s/ James Seery  
\_\_\_\_\_  
Signature of Responsible Party  
CEO  
\_\_\_\_\_  
Title

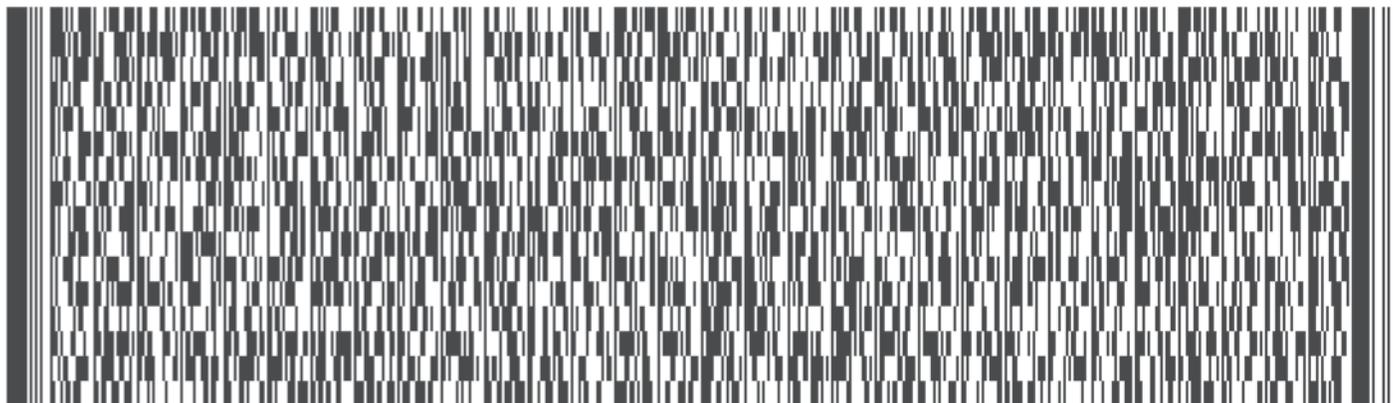
James Seery  
\_\_\_\_\_  
Printed Name of Responsible Party  
07/21/2023  
\_\_\_\_\_  
Date



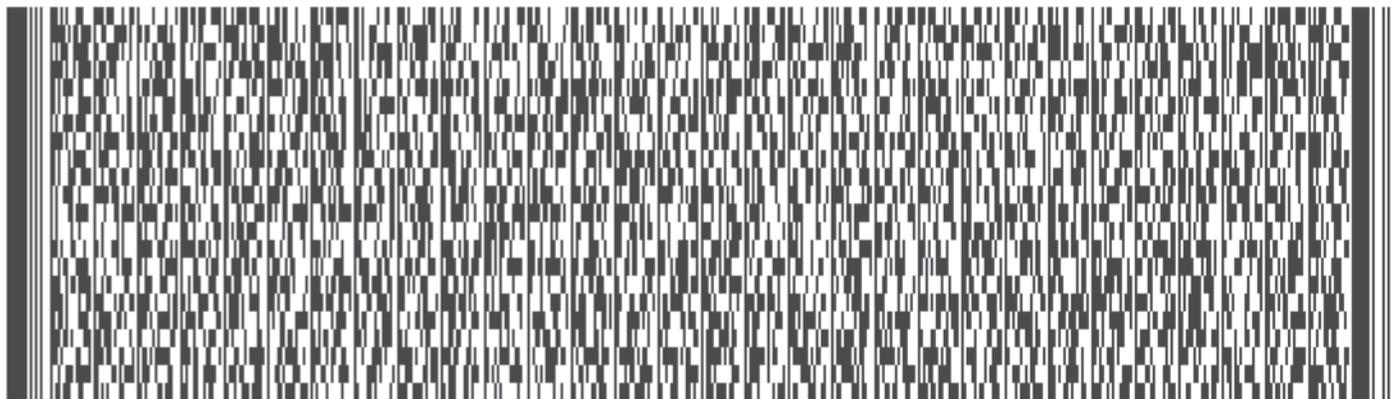
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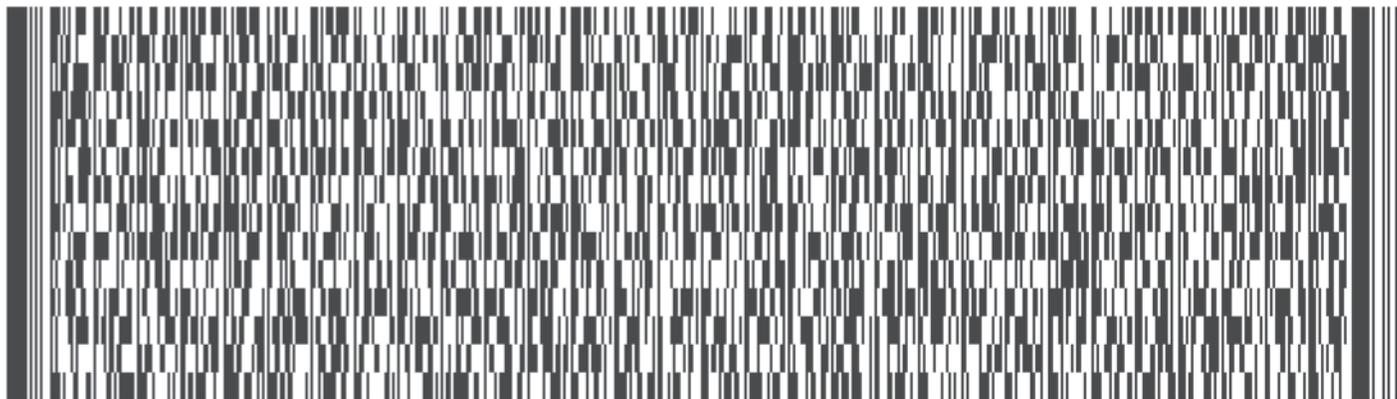
Other Page 1



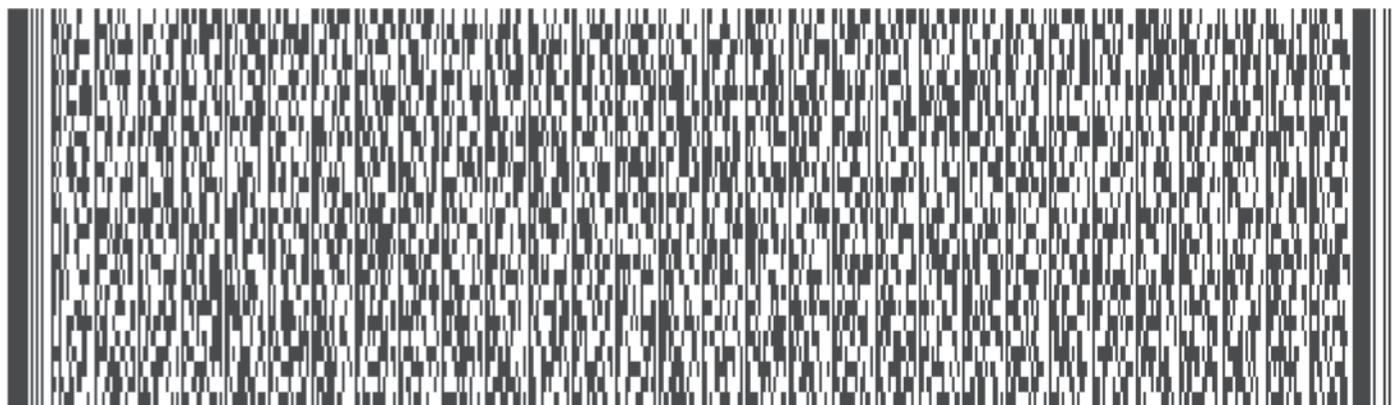
Page 2 Minus Tables



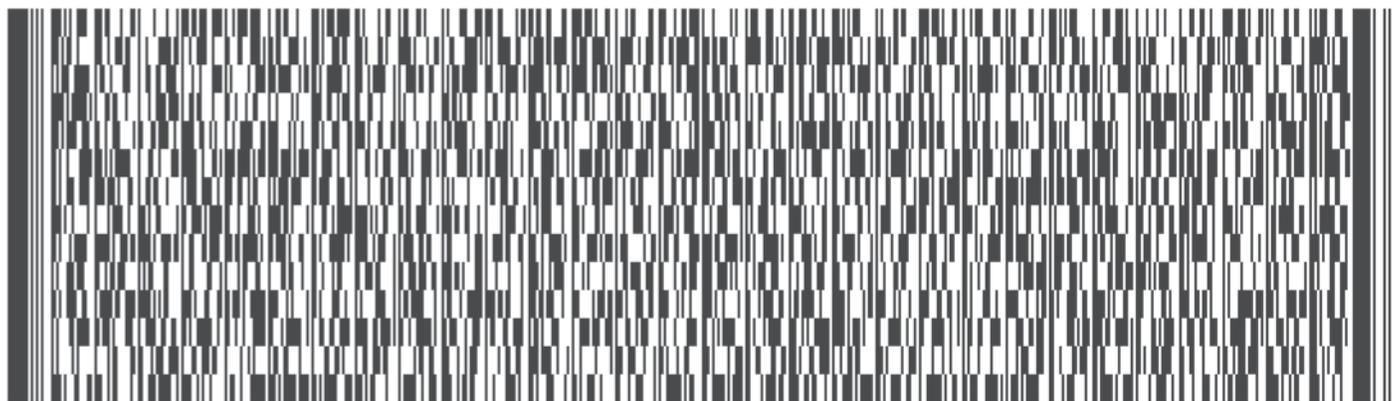
Bankruptcy Table 1-50



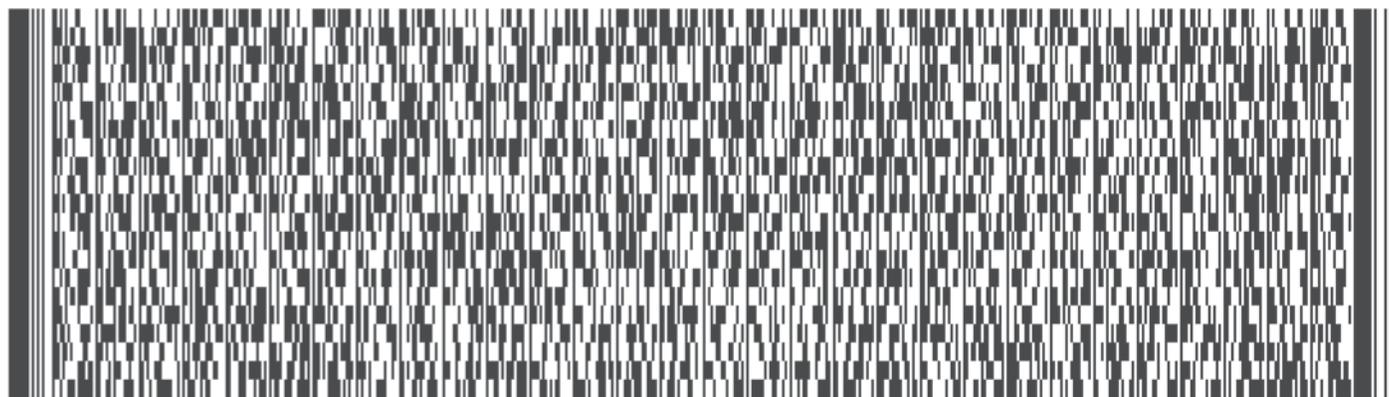
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page



professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the "Committee").

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

### **Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor's governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

# Exhibit 3

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP

Case No. 19-34054

Debtor(s)

§  
§  
§  
§

Jointly Administered

**Post-confirmation Report**

Chapter 11

Quarter Ending Date: 06/30/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:  Reorganized Debtor

Other Authorized Party or Entity: Highland Claimant Trust

Name of Authorized Party or Entity

/s/ Zachery Z. Annable

Signature of Responsible Party

07/21/2023

Date

Zachery Z. Annable, Hayward PLLC

Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106

Dallas TX 75231

Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

**Part 1: Summary of Post-confirmation Transfers**

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	\$6,969,608	\$325,793,422
b. Non-cash securities transferred	\$0	\$0
c. Other non-cash property transferred	\$0	\$0
d. Total transferred (a+b+c)	\$6,969,608	\$325,793,422

**Part 2: Preconfirmation Professional Fees and Expenses**

a.			Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor		<i>Aggregate Total</i>			
<i>Itemized Breakdown by Firm</i>						
	Firm Name	Role				
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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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Debtor's Name Highland Capital Management, LP

Case No. 19-34054

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		Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative	
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor					
	<i>Aggregate Total</i>					
	<i>Itemized Breakdown by Firm</i>					
		Firm Name	Role			
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Debtor's Name Highland Capital Management, LP

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Debtor's Name Highland Capital Management, LP

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Debtor's Name Highland Capital Management, LP

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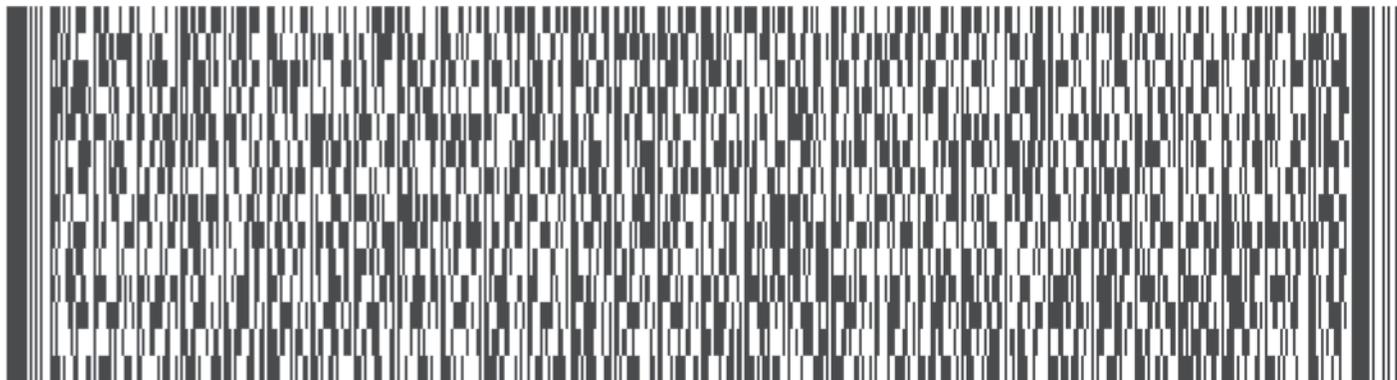
**Privacy Act Statement**

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." See 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: [http://www.justice.gov/ust/eo/rules\\_regulations/index.htm](http://www.justice.gov/ust/eo/rules_regulations/index.htm). Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

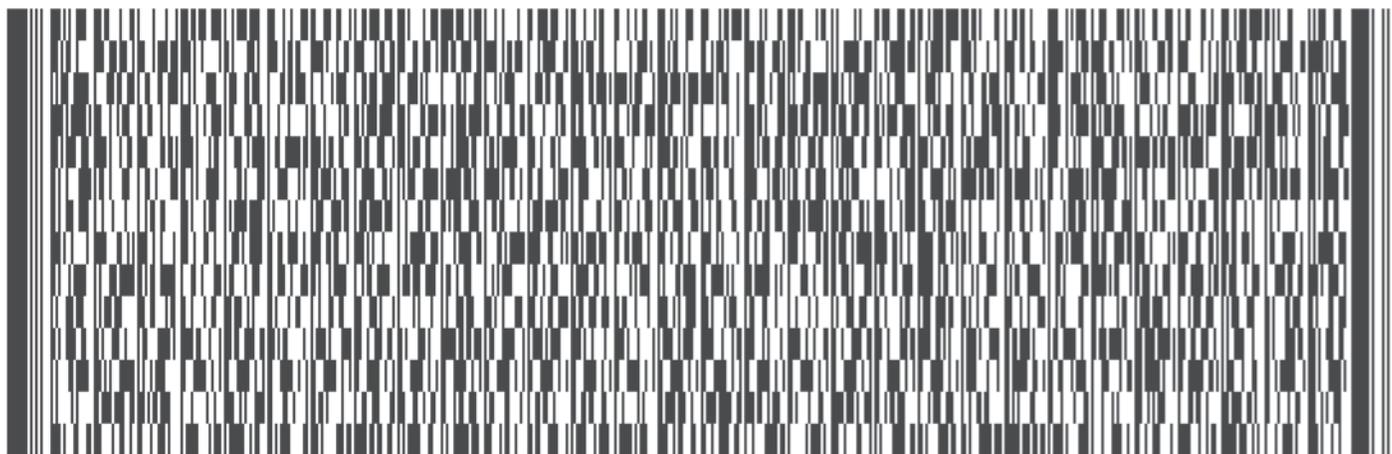
**I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.**

/s/ James Seery  
\_\_\_\_\_  
Signature of Responsible Party  
Claimant Trustee  
\_\_\_\_\_  
Title

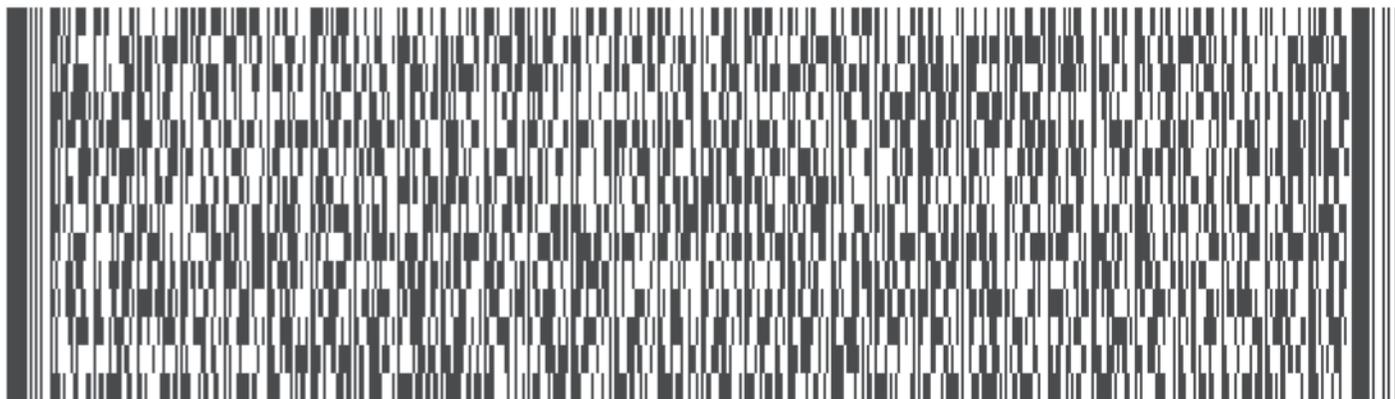
James Seery  
\_\_\_\_\_  
Printed Name of Responsible Party  
07/21/2023  
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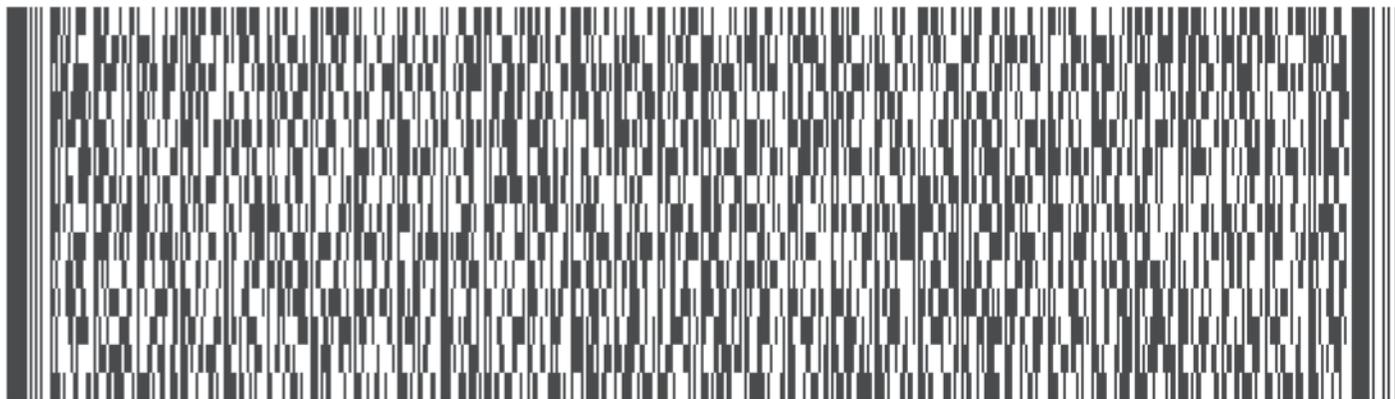
Page 1



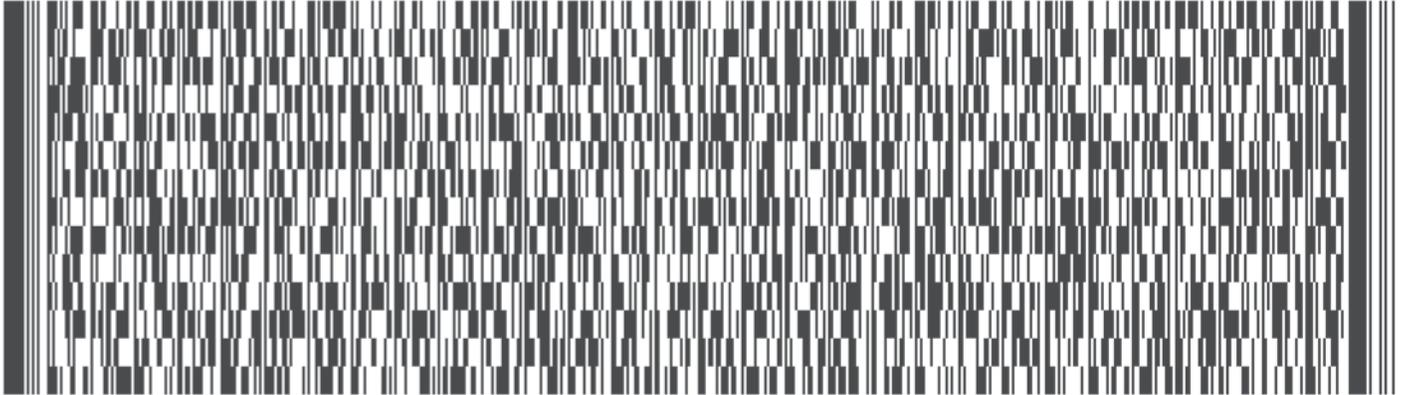
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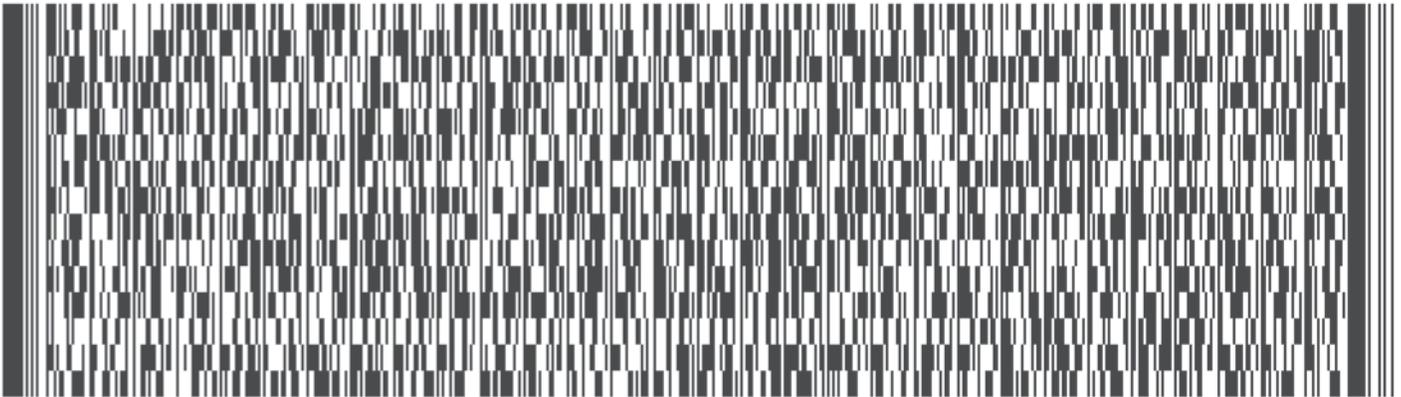
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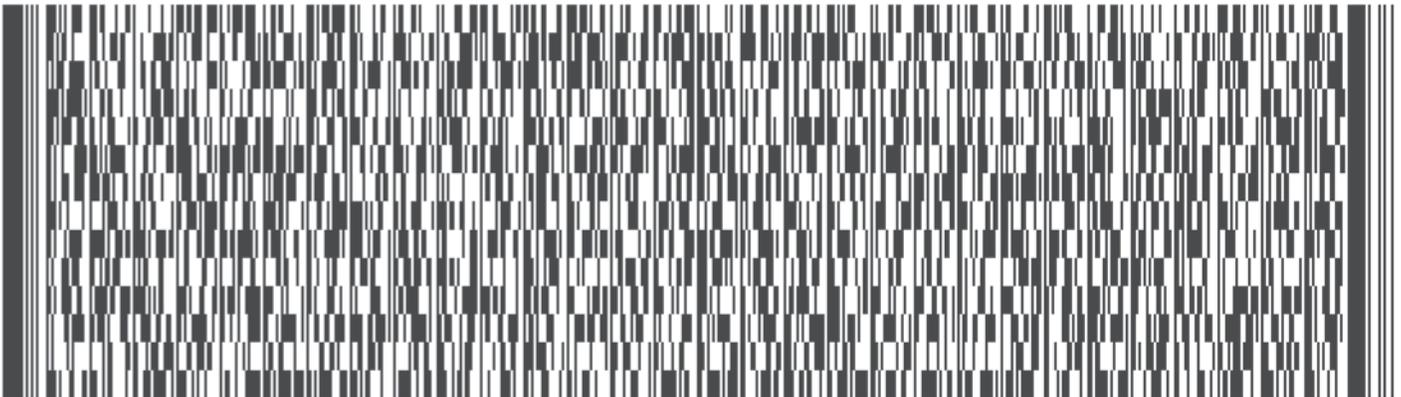
Bankruptcy Table 1-50



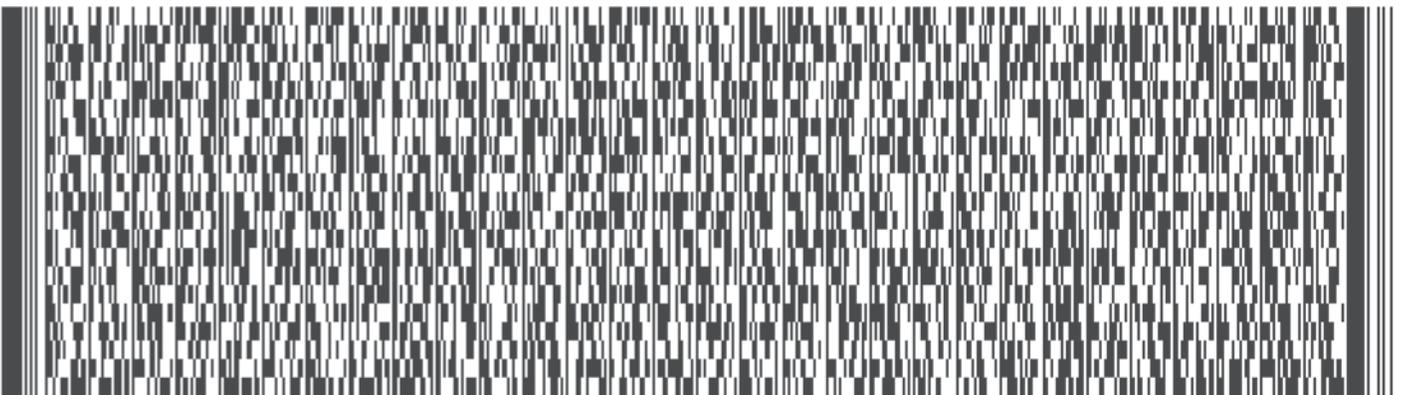
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	
	)	

**GLOBAL NOTES TO POST CONFIRMATION REPORT**

The Highland Claimant Trust has filed the attached post-confirmation report (the “PCR”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”), with respect to the case of Reorganized Debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the “Bankruptcy Case”). The Highland Claimant Trust prepared the PCR with the assistance of the Reorganized Debtor’s employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* <https://www.justice.gov/ust/chapter-11-operating-reports>). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Highland Claimant Trust, the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Highland Claimant Trust relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Highland Claimant Trust made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Highland Claimant Trust reserves the right to amend and supplement the PCR as may be necessary or appropriate.

**Part 2: Preconfirmation Professional Fees and Expenses**

The Highland Claimant Trust did not make any payment of professional fees prior to Confirmation of the Plan.

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<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

### **Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

For presentation purposes, the chart showing claims anticipated under the plan, paid claims and allowed claims are reflected in both the Reorganized Debtor and Claimant Trust post-confirmation report under Part 3: Recoveries of the Holders of Claims and Interests under the Confirmed Plan.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with the Claimant Trust's governing documents and the Plan.

# Exhibit 4

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
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Zachery Z. Annable  
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ZAnnable@HaywardFirm.com  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

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

---

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Case No. 19-34054
L.P., <sup>1</sup>	§	Chapter 11
	§	
Debtor.	§	
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**DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B) ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby moves (the “Motion”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) authorizing the (a) creation of an indemnity subtrust (the “Indemnity Subtrust”), and (b) entry into an indemnity trust agreement (the “Trust Agreement”), and (ii) granting related relief.

### **INTRODUCTION**<sup>2</sup>

1. Pursuant to this Motion, the Debtor requests authority to create the Indemnity Subtrust and enter into a Trust Agreement that is substantially consistent with terms set forth in the Term Sheet attached to this Motion as **Exhibit B** (collectively the “Indemnity Trust Documents”). As discussed below, the Indemnity Trust Documents will secure the indemnity obligations of the Claimant Trust, Litigation Trust and the Reorganized Debtor pursuant to the terms of the Claimant Trust Agreement, the Litigation Trust Agreement, the Reorganized Limited Partnership Agreement and the Plan (collectively the “Indemnity Obligations”).

2. The Debtor intends for the Indemnity Subtrust to be in lieu of directors’ and officers’ insurance (“D&O Insurance”), which the Debtor contemplated obtaining as a condition to the Effective Date for the benefit of the beneficiaries of the Indemnity Obligations. The Debtor and the Committee thoroughly explored the market for obtaining D&O Insurance. Based on such due diligence, the Debtor, in consultation with the Committee, determined that based upon the prohibitive cost of D&O Insurance, securing the Indemnity Obligations through an Indemnity Subtrust is preferable and in the best interests of the Debtor’s estate and its creditors. Moreover, as discussed below, establishing the Indemnity Subtrust will facilitate the Effective

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<sup>2</sup> Capitalized terms used but not defined in this introduction have the meanings given to them below.

Date of the Plan which the Debtor anticipates will occur on or about August 1, 2021, if the Court approves the Motion.

### **JURISDICTION**

3. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The bases for the relief requested herein are sections 105 and 363 of the Bankruptcy Code.

### **STATEMENT OF FACTS**

#### **A. The Debtor’s Bankruptcy Case**

5. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”).

6. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Bankruptcy Court. On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s chapter 11 case to this Court [Docket No. 186].<sup>3</sup>

7. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

B. **The Court’s Confirmation of the Plan and Denial of Motions for a Stay Pending Appeal.**

8. On February 22, 2021, after a two-day hearing, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”) with respect to the Debtor’s *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, as modified (the “Plan”).<sup>4</sup>

9. James Dondero and certain of his related entities (collectively, the “Dondero Entities”) appealed the Confirmation Order [Docket Nos. 1957, 1966, 1970, 1972] and filed motions in this Court seeking a stay of the Confirmation Order pending appeal [Docket Nos. 1955, 1967, 1971, 1973] (the “Stay Motions”). This Court denied the Stay Motions [Docket Nos. 2084, 2095].

10. Certain of the Dondero Entities subsequently filed motions for stay pending appeal in the District Court for the Northern District of Texas, Dallas Division (the “District Court”), in April 2021 (the “District Court Stay Motions”).

11. In May 2021, following the grant of an expedited appeal by the Fifth Circuit Court of Appeals, certain of the Dondero Entities filed motions for stay pending appeal in the Fifth Circuit in May 2021 (the “Appellate Stay Briefs”) despite not having a ruling on the District Court Stay Motions. On June 21, 2021, the Fifth Circuit denied the Appellate Stay Briefs.

12. On June 23, 2021, the District Court denied the District Court Stay Motions.

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<sup>4</sup> Unless otherwise noted, capitalized terms used herein have the meanings given to them in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. See *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Ex. B [Docket No. 1875].

C. **Conditions to the Effective Date of the Plan.**

13. Article VIII of the Plan contains the conditions to the Effective Date of the Plan. The two conditions that have delayed the occurrence of the Effective Date are (i) the Confirmation Order becoming a Final Order and (ii) the Debtor obtaining D&O Insurance acceptable to the Debtor, the Committee, the Claimant Trust Oversight Committee, and the Litigation Trustee.

14. In addition, the Debtor determined, in the weeks following confirmation, that it would require exit financing in order to maintain sufficient liquidity for post-Effective Date operations and to comply with its obligations under the Plan. The facts and circumstances leading to the Debtor's decision to obtain exit financing are set forth in the *Motion for Entry of an Order (i) Authorizing the Debtor to (a) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (b) Incur and Pay Related Fees and Expenses, and (ii) Granting Related Relief* [Docket No. 2229] (the "Exit Financing Motion"). The Court approved the Exit Financing at a hearing on June 25, 2021.

15. As discussed at the confirmation hearing, the Debtor encountered difficulty in obtaining D&O Insurance because of the litigiousness of the case and the threat that litigation would continue well beyond confirmation of the Plan. Nevertheless, after confirmation, the Debtor, working closely with the Committee, continued to pursue D&O Insurance. Ultimately, however, the Debtor, the Committee, and the Independent Board, including Mr. Seery, who will be the Claimant Trustee and manage the Reorganized Debtor, determined that the insurance that was available was both insufficient and too costly in light of the coverage being provided.

16. The Debtor, working closely with the Committee, subsequently investigated alternatives to traditional D&O Insurance that could provide the beneficiaries of the Indemnity

Obligations protection after the Effective Date. The most attractive alternative was to create the Indemnity Subtrust, the approval of which is being sought through this Motion. If the Court approves this Motion, the Debtor will waive the condition to the Effective Date requiring the Confirmation Order to become a Final Order and thereby paving the way for the Plan to become effective.

**D. Post-Effective Date Governance and Management**

17. The Plan provides for the creation of the Claimant Trust, the Litigation Trust, and the Reorganized Debtor on the Effective Date to facilitate the monetization of the Debtor’s assets and the pursuit of Estate Claims for the benefit of the Debtor’s creditors and stakeholders. As currently contemplated, the Claimant Trust will be overseen by James P. Seery, Jr., as the Claimant Trustee, and an Oversight Board, made up of the Debtor’s largest creditors. The Claimant Trust is governed by the terms of the Claimant Trust Agreement.<sup>5</sup> The Litigation Sub-Trust is governed by the terms of the Litigation Trust Agreement.<sup>6</sup> And the Reorganized Debtor will be governed by the Reorganized Limited Partnership Agreement.<sup>7</sup> It is anticipated that Mr. Seery will be the Claimant Trustee and the chief executive officer of the Reorganized Debtor.

**E. Post-Effective Date Indemnification**

18. The terms of the Claimant Trust Agreement, the Litigation Trust Agreement, and the Reorganized Limited Partnership Agreement each provide for a broad indemnification of the parties tasked with managing the implementation of the Plan (collectively, the “Indemnified

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<sup>5</sup> The final Claimant Trust Agreement was filed as Exhibit R to *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* [Docket No. 1811] on January 22, 2021 (the “January Supplement”).

<sup>6</sup> The final Litigation Trust Agreement was filed as Exhibit T to the January Supplement.

<sup>7</sup> The final Reorganized Limited Partnership Agreement was filed as Exhibit Z to the January Supplement.

Parties”).<sup>8</sup> The costs of indemnifying the Indemnified Parties (the “Indemnification Costs”) were provided for in the Plan and the Plan Documents. The Indemnification Costs would be treated as expenses and be paid before, and be senior to, distributions to the Debtor’s pre-petition creditors, *i.e.*, the Claimant Trust Beneficiaries. The relevant documents also authorized the reservation of assets sufficient to fund the Indemnification Costs.

**A. The Indemnity Subtrust and Trust Agreement**

19. As discussed above, the Debtor has determined that it is in the best interests of the Debtor’s estate and its stakeholders to create the Indemnity Subtrust pursuant to the terms of the Trust Agreement. The Indemnity Subtrust will be administered by a third-party corporate trustee. The Indemnity Trust will, as discussed below, be funded on the Effective Date with \$2.5 million in cash and a note (the “Indemnification Note”) in the principal amount of \$22.5 million with such amounts to be held in reserve and used solely to pay Indemnification Costs that are not otherwise paid or payable by the Claimant Trust, Litigation Trust, or Reorganized Debtor, as applicable.

20. As contemplated by the Plan and consistent with the Claimant Trust Agreement, the Litigation Trust Agreement, and the Reorganized Limited Partnership Agreement, the Indemnification Costs have priority to other claims. The Indemnity Subtrust is the vehicle which ensures that adequate provision for such Indemnification Costs is made, notwithstanding the

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<sup>8</sup> The Indemnified Parties of (a) the Claimant Trust are (i) the Claimant Trustee (including each former Claimant Trustee), (ii) Delaware Trustee, (iii) the Oversight Board, and (iv) all past and present Members of the Oversight Board, and the employees, agents, and professionals of each of the foregoing; (b) the Litigation Trust are (i) the Litigation Trustee (including each former Litigation Trustee), (ii) the Oversight Board, and (iii) all past and present Members of the Oversight Board, and the employees, agents, and professionals of each of the foregoing; and (c) the Reorganized Debtor are (i) New GP LLC (as the Reorganized Debtor’s general partner) and each member, partner, director, officer, and agent thereof, (ii) each person who is or becomes an officer of the Reorganized Debtor, and (iii) each person who is or becomes an employee or agent of the Reorganized Debtor if New GP LLC determines in its sole discretion that such employee or agent should be indemnified. *See* Claimant Trust Agreement, § 8.2; Litigation Trust Agreement, § 8.2.; Reorganized Limited Partnership Agreement, §§ 10(b)-(c).

timing pursuant to which assets are monetized and distributions would otherwise be made to such beneficiaries of the Claimant Trust.

21. Certain material terms of the Trust Agreement and the Indemnity Subtrust are as follows:<sup>9</sup>

<b>Beneficiaries:</b>	The Indemnified Parties
<b>Indemnity Trustee</b>	A corporate trustee with appropriate trust powers under applicable state and/or federal law.
<b>Indemnity Trust Administrator</b>	Mr. Seery, initially in his capacity as the Claimant Trustee or in his individual capacity if no longer serving as the Claimant Trustee.
<b>Indemnity Trust Corpus</b>	At the inception of the Indemnity Trust, the trust corpus shall consist of the following, to be irrevocably contributed by the Grantor: <ol style="list-style-type: none"><li>1. Cash of \$2.5 million; and</li><li>2. the Indemnification Funding Note, in the principal amount of \$22.5 million.</li></ol> The foregoing contributions are intended to create and maintain a balance of liquid assets in the Indemnity Trust Account of not less than \$25 million (the "Indemnity Trust Account Minimum Balance").
<b>Indemnification Funding Note</b>	The Indemnification Funding Note will represent and document the Claimant Trustee's obligation to make additional cash deposits into the Indemnity Trust Account to satisfy the obligations of the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor, each of which will be jointly and severally liable under the Indemnification Funding Note. After the initial funding of principal under the Indemnification Funding Note, the principal balance thereof will at all times equal the amount representing the difference between (i) the Indemnity Trust Account Minimum Balance and (ii) the balance of liquid assets held in the Indemnity Trust Account, as reported on the most recent quarterly statement issued by the Indemnity Trustee.
<b>Withdrawal of Trust Assets</b>	Consistent with the Indemnity Trust's purpose as a collateral mechanism, withdrawals from the Indemnity Trust Account are contemplated only following a tender of for indemnity pursuant to Section 8.2 of the Claimant Trust Agreement and the failure of such Beneficiary to receive payment in full of such indemnity claim from the Claimant Trust within [30] days.
<b>Duration of the Indemnity Trust</b>	The Indemnity Trust will exist and remain in full force and effect until the <i>earlier of</i> (i) the expiry of all indemnification rights under Section 8.2 of the Claimant Trust Agreement, due to expiration of all applicable statutes of limitations (as determined by the Indemnity Trust Administrator, in his sole and absolute discretion), and (ii) the mutual agreement to terminate the Indemnity Trust by the Grantor and the Indemnity Trust Administrator.
<b>Liquidation and Final Distribution of Trust Assets</b>	Upon dissolution and liquidation of the Indemnity Trust, any assets remaining in the Indemnity Trust Account will be transferred to the Claimant Trust; provided, however, if the Claimant Trust is no longer in existence, then such distribution of the Indemnity Trust assets will be made according to the same distribution methodology contemplated in Section 9.2 of the Claimant Trust

<sup>9</sup> The following is by way of summary only. Parties are encouraged to read the entirety of the Term Sheet. In the event that the description set forth herein is in conflict with the Term Sheet, the Term Sheet will control. All terms are subject to change.

Agreement (or the successor to such numbered section) on the effective date of the termination of the Claimant Trust.

**Governance of the Indemnity Trust**

Consistent with the Indemnity Trust’s purpose as a collateral mechanism, it is not contemplated that the Indemnity Trust will need any comprehensive governance system. For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the Indemnity Trust Administrator, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee.

Beneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account, other than the Indemnity Trust Administrator in such capacity.”

22. The Debtor believes that it has the support of the Committee with respect to the implementation of the Indemnity Subtrust. However, the Debtor and the Committee are still discussing the terms of the Trust Agreement and the foregoing terms may change. If the terms change, the Debtor will file an updated Term Sheet as necessary.

**B. Entry into the Trust Agreement Is an Exercise of the Debtor’s Sound Business Judgment and Should Be Approved**

23. The Bankruptcy Code authorizes a debtor, after notice and a hearing, to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). It is well established in this jurisdiction that a debtor may use property of the estate outside the ordinary course of business if there is a good business reason for doing so. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App’x 429, 435 (5th Cir. 2016) (sale of debtors’ assets under section 363(b) of the Bankruptcy Code must “be supported by an articulated business justification, good business judgment, or sound business reasons.”) (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)); *Petfinders LLC v. Sherman (In re Ondova Ltd)*, 620 F. App’x 290, 291 (5th Cir. 2015) (sale of debtors’ assets under section 363(b) of the Bankruptcy Code is exercise of the trustee’s sound business judgment”); *In re ASARCO, LLC*, 441 B.R. 813, 830 (Bankr. S.D. Tex. 2010) (outside of the ordinary course of

business, “for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors, and equity holders, there must be some articulated business justification for using, selling, or leasing the property”) (quoting *In re Continental Air Lines*, 780 F.2d 1223, 1226 (5th Cir. 1986)), *aff’d*, 650 F.3d 593 (5th Cir. 2011).

24. To determine whether the business-judgment test is satisfied, courts require “a showing that the proposed course of action will be advantageous to the estate.” *In re Pisces Energy, LLC*, 2009 Bankr. LEXIS 4709, at \*18 (Bankr. S.D. Tex. Dec. 21, 2009). In the absence of a showing of bad faith or an abuse of business discretion, a debtor’s business judgment will not be altered. *See, e.g., NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d*, 465 U.S. 513 (1984); *Lubrizol Enter. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985). “Great judicial deference is given” to the “exercise of business judgment.” *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp.)*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005).

25. Entry into and performance under the Trust Agreement and the creation of the Indemnity Subtrust is in the best interests of the Debtor’s estate and represents a sound exercise of the Debtor’s business judgment. The Effective Date of the Plan cannot occur unless it is certain that there will be sufficient resources to pay the Indemnification Costs. As the Court is unfortunately aware, the Dondero Entities’ strategy is to sue the Debtor’s current management and post-Effective Date management whenever possible. Mr. Dondero admitted as much during the hearing held on June 8, 2021. The Debtor is therefore under no illusions. There will be Indemnification Costs and, unfortunately, they probably will be significant.

26. For that reason, among others, without the ability to guarantee payment of the Indemnification Costs, the Debtor would not be able to engage competent management to

oversee the implementation of the Plan, including the monetization of the Debtor's assets, prosecution of Estate Claims, and, ultimately, distributions to the Claimant Trust Beneficiaries. As discussed above, execution of the Trust Agreement is in lieu of obtaining D&O Insurance which, because of Mr. Dondero's history of litigiousness and his notoriety in the insurance industry could not be obtained in a cost-effective manner.

27. The Indemnity Subtrust (when coupled with the Exit Facility) will allow the Plan to become effective and permit the Reorganized Debtor to monetize its assets and pay allowed claims, as contemplated under the Plan, while the Reorganized Debtor or Litigation Trustee, as applicable, simultaneously pursues Estate Claims and otherwise attempts to recover value for creditors.

28. For these reasons, the Debtor submits that entering into the Trust Agreement and the creation of the Indemnity Subtrust will be an exercise of its sound business judgment, in the best interests of the Debtor's estate, and should be approved.

**C. Waiver of the Stay Period Pursuant to Bankruptcy Rule 6004(h) Is Proper**

29. The Indemnity Subtrust is required to promptly implement the Effective Date. Consequently, the Debtor requests that the Court enter an order providing that the Debtor has established cause to exclude the relief requested herein from the fourteen-day stay period provided under Bankruptcy Rule 6004(h). Accordingly, the Debtor requests that the Order authorizing the Debtor to enter into the Trust Agreement be effective immediately upon entry such that the Debtor may proceed to complete the necessary related work to enable the prompt occurrence of the Effective Date.

**Notice**

30. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United

States Attorney for the Northern District of Texas; (c) the Debtor's principal secured parties; (d) counsel to the Committee; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Intentionally Blank]*

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: June 25, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

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*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT A**

**Proposed Order**

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

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<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Case No. 19-34054 Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Re: Docket No. _____</b>
	§	

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**ORDER APPROVING DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I)  
AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B)  
ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING  
RELATED RELIEF**

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Upon the *Debtor’s Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* (the “Motion”),<sup>1</sup> and the Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and

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<sup>1</sup> All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is granted as set forth herein.
2. The Debtor is authorized to enter into and perform under the Trust Agreement and consummate the transactions contemplated thereby, including the creation of the Indemnity Subtrust.
3. The Debtor is authorized to negotiate, prepare, execute, and deliver all documents and take such other action as may be necessary or appropriate to implement, effectuate, and fully perform its obligations as and when they are incurred and come due under the Trust Agreement.
4. The terms and provisions of this Order shall be binding in all respects upon all parties in this chapter 11 case, the Debtor, its estate, and all successors and assigns thereof.
5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.



**EXHIBIT B**

## TERM SHEET FOR INDEMNITY TRUST AGREEMENT

This Term Sheet sets forth the basic terms of a proposed trust (the “Indemnity Trust”) to provide collateral security supporting the indemnification obligations specified in (i) Section 8.2 of that certain Claimant Trust Agreement, effective as of [●], 2021 (the “Claimant Trust Agreement”), establishing that certain claimant trust (the “Claimant Trust”) pursuant to the *Fifth Amended Plan of Reorganization of Highland Capital Management L.P (as Modified)* (the “Plan”), (ii) Section 8.2 of the Litigation Sub-Trust Agreement, establishing the Litigation Sub-Trust pursuant to the Plan, and (iii) Section 10 of the Reorganized Limited Partnership Agreement (as defined in the Plan), establishing the Reorganized Debtor (as defined in the Plan) pursuant to the Plan. The Indemnity Trust is based on the fundamental premise, as set forth under the Plan and consistent with the Claimant Trust Agreement and related documents, that the indemnification rights under the Claimant Trust are senior priority obligations of the Claimant Trust, relative to the classes of beneficiaries thereunder, and that adequate provision for such indemnification needs to be funded, notwithstanding the timing pursuant to which assets are realized by the Claimant Trust and distributions would otherwise be made to such beneficiaries of the Claimant Trust. The Indemnity Trust is not intended to address any qualifications, requirements or standards for indemnification; such matters are to be addressed solely under and pursuant to the standards set forth in Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub-Trust Agreement, and Section 10 of the Reorganized Limited Partnership Agreement. This Term Sheet assumes that the Indemnity Trust is intended solely as a collateral mechanism, to fund indemnification claims that were tendered to but not paid by the Claimant Trust, Litigation Sub-Trust or the Reorganized Debtor within a reasonable period of time (thirty (30) days) following such claim being made. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Claimant Trust Agreement.

<b>Grantor</b>	Claimant Trust, pursuant to the authority granted under Section 6.1(a) of the Claimant Trust Agreement.
<b>Beneficiaries</b>	<p>The Beneficiaries of the Indemnity Trust shall be the following:</p> <ol style="list-style-type: none"> <li>1. Indemnified Parties under Section 8.2 of the Claimant Trust Agreement and their respective employees, agents and professionals, which are also indemnitees under the same provision;</li> <li>2. “Indemnified Parties” under Section 8.2 of the Litigation Sub-Trust Agreement and their respective employees, agents and professionals, which are also indemnitees under the same provision; and</li> <li>3. “Covered Persons” under Section 10 of the Reorganized Limited Partnership Agreement.</li> </ol>
<b>Indemnity Trustee</b>	A corporate trustee with appropriate trust powers under applicable state and/or federal law.
<b>Indemnity Trust Administrator</b>	James P. Seery, Jr., initially in his capacity as the Claimant Trustee or in his individual capacity if no longer serving as

	<p>the Claimant Trustee. If James P. Seery, Jr. voluntarily resigns or is unable to serve as Indemnity Trust Administrator, his legal successors or assigns.</p> <p>If Cause (as defined in the Claimant Trust Agreement) to remove James P. Seery Jr. or the then current Indemnity Trust Administrator is shown by final order of a court of competent jurisdiction, a successor chosen by the Claimant Trustee.</p> <p>Governance of the Indemnity Trust shall be effected by and through the Indemnity Trust Administrator (see “Governance”).</p>
<p><b>Indemnity Trust Corpus</b></p>	<p>At the inception of the Indemnity Trust, the trust corpus shall consist of the following, to be irrevocably contributed by the Grantor:</p> <ol style="list-style-type: none"> <li>1. Cash of \$2.5 million; and</li> <li>2. the Indemnification Funding Note, in the principal amount of \$22.5 million.</li> </ol> <p>The foregoing contributions are intended to create and maintain a balance of liquid assets in the Indemnity Trust Account of not less than \$25 million (the “Indemnity Trust Account Minimum Balance”).</p>
<p><b>Indemnification Funding Note</b></p>	<p>The Indemnification Funding Note will represent and document the Claimant Trustee’s obligation to make additional cash deposits into the Indemnity Trust Account to satisfy the obligations of the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor, each of which will be jointly and severally liable under the Indemnification Funding Note; such deposits are intended to ensure proper allocation of the respective assets of the Claimant Trust, the Litigation Sub-Trust and the Reorganized Debtor to the Indemnity Trust upon material monetizations by the Claimant Trust, reflective of the Claimant Trustee’s power to reserve for senior indemnity claims under Section 6.1(a) of the Claimant Trust Agreement. Payments under the Indemnification Funding Note will be senior in priority to any distributions to the Claimant Trust beneficiaries.</p> <p>The initial principal amount of the Indemnification Funding Note will be \$22.5 million, representing the extent of the additional collateral to be allocated to the Indemnity Trust, such that the Indemnity Trust Account</p>

	<p>will maintain the Indemnity Trust Account Minimum Balance.</p> <p>The initial principal amount of the Indemnification Funding Note will be paid in full or in part on the earlier of (a) demand for payment from the Indemnity Trust Administrator or (b) the date at which the net asset value (asset value net of liabilities and expense reserves) is less than 200% of the principal amount of the Indemnification Funding Note. Subject to the foregoing, the Claimant Trustee will have sole and absolute discretion to determine the timing and amount of the payments of the initial principal amount of the Indemnification Funding Note consistent with his view of liquidity needs of the Claimant Trust and related entities and the requirements of any financing agreement binding on the Claimant Trust. Upon the Claimant Trustee's determination that such a payment should be made, the amount of the payment shall be due within five (5) days of such a determination.</p> <p>After the initial funding of principal under the Indemnification Funding Note, the principal balance thereof will at all times equal the amount representing the difference between (i) the Indemnity Trust Account Minimum Balance and (ii) the balance of liquid assets held in the Indemnity Trust Account, as reported on the most recent quarterly statement issued by the Indemnity Trustee. Such principal balance of the Indemnification Funding Note will be documented by the Indemnity Trust Administrator and will be paid in full, in a manner determined by the Claimant Trustee consistent with the procedures set forth in the immediately preceding paragraph hereof.</p> <p>For the avoidance of doubt, the foregoing payments under the Indemnification Funding Note will be senior to any distribution to beneficiaries under the Claimant Trust. In the event that the liquid assets of the Claimant Trust are insufficient to satisfy the foregoing payments, the Claimant Trustee must take all reasonable action to satisfy such obligations under the Indemnification Funding Note, including accessing any available credit lines or third-party leverage, and no current payments to Claimant Trust beneficiaries will be made until all current amounts due under the Indemnification Funding Note have been made. Consistent with the foregoing, upon written request of the Indemnity Trust Administrator, the Claimant Trustee shall provide collateral to secure any amounts due or which may become due under the Indemnification Funding Note, including the posting of a bank letter of</p>
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	<p>credit, under terms acceptable to the Indemnity Trust Administrator.</p> <p>The Indemnification Funding Note will not bear interest, other than that which must be imputed under applicable law. All amounts due under the Indemnification Funding Note shall be absolute, regardless of their characterization.</p>
<b>Indemnity Trust Account</b>	<p>A custodial account to be maintained/held by the Indemnity Trustee. The trust corpus and other assets of the Indemnity Trust shall be held in such Indemnity Trust Account maintained by the Indemnity Trustee, for the benefit of the Beneficiaries. Any investment income (see “Investment of Trust Assets”) shall be retained in the Indemnity Trust Account and will be included in the balance of Indemnity Trust Corpus. Any investment income, investment loss and Withdrawals of Trust Assets will be included in the determination of whether the Indemnity Trust Account Minimum Balance has been achieved (see “Indemnification Funding Note”).</p>
<b>Reports and Account Statements</b>	<p>The Indemnity Trustee will provide comprehensive Indemnity Trust Account statements to the Beneficiaries and the Indemnity Trust Administrator on a quarterly basis, beginning at inception. Such statements will include the balance of the assets held in the Indemnity Trust Account as of the subject reporting date, plus a full accounting of all deposits (including amounts collected under the Indemnification Funding Note and any investment income) and any withdrawals/distributions made during the subject period and the effect of any investment losses. Such statements may be redacted for any sensitive information, as determined by the Indemnity Trust Administrator, in his sole and absolute discretion.</p>
<b>Withdrawal of Trust Assets</b>	<p>Consistent with the Indemnity Trust’s purpose as a collateral mechanism, withdrawals from the Indemnity Trust Account are contemplated only following a tender of for indemnity pursuant to Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, or the Reorganized Limited Partnership Agreement and the failure of such Beneficiary to receive payment in full of such indemnity claim from the Claimant Trust within 30 days. It is expressly contemplated that in the ordinary course of their respective businesses, the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor will pay the costs and expenses of</p>

	<p>defending indemnified claims as well as the amount of any such claims if successful. The Indemnity Trust will serve as a source of indemnification for such claims as provided herein in the event that any of the Claimant Trust, the Litigation Sub-Trust, or the Reorganized Debtor, as the case may be, does not pay such claims.</p> <p>A request for withdrawal of assets from the Indemnity Trust Account must be presented to the Indemnity Trustee, with a copy to the Indemnity Trust Administrator, and must be accompanied by an written certification of the following:</p> <ol style="list-style-type: none"> <li>1. A claim for indemnification was made under Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, or the Reorganized Limited Partnership Agreement, accompanied by a copy of such claim and all underlying documentation.</li> <li>2. The Beneficiary did not receive full payment with respect to such indemnification claim with 30 days.</li> </ol> <p>Following the receipt of the above information, the Indemnity Trust Administrator will issue a withdrawal/distribution order to the Indemnity Trustee, with a copy to the claiming Beneficiary. Upon receipt of such order, the Indemnity Trustee will pay the full amount of the requested distribution to the subject Beneficiary; such payment will be made within 3 business days of receipt.</p> <p>In the event that a claiming Beneficiary receives payment with respect to the subject indemnity claim from the Claimant Trust or any other source, such Beneficiary must promptly notify the Indemnity Trustee and the Indemnity Trust Administrator, and the subject request for payment from the Indemnity Trust will be revised accordingly; to the extent that any such amounts were already received from the Indemnity Trust, such amounts must be repaid to the Indemnity Trust Account, without interest.</p>
<p><b>Duration of the Indemnity Trust</b></p>	<p>The Indemnity Trust will exist and remain in full force and effect until the <i>earlier of</i> (i) the expiry of all indemnification rights under Section 8.2 of the Claimant Trust Agreement, Section 8.2 of the Litigation Sub Trust Agreement, and the Reorganized Limited Partnership Agreement due to expiration of all applicable statutes of limitations (as determined by the Indemnity Trust Administrator, in his sole and absolute discretion), and (ii)</p>

	<p>the mutual agreement to terminate the Indemnity Trust by the Grantor and the Indemnity Trust Administrator.</p> <p>For the avoidance of doubt, neither the liquidation or termination of the Claimant Trust nor the legal existence of the Grantor or any other party thereto will have any effect on the legal existence of the Indemnity Trust.</p>
<b>Wind-down</b>	<p>Upon the determination of the Indemnity Trust Administrator that the Claimant Trust has substantially completed its efforts to monetize and distribute its assets or such earlier date that the Indemnity Trust Administrator shall determine, the Indemnity Trust Administrator and the Claimant Trust Oversight Committee shall work in good faith to replace the Indemnity Funding Note with a suitable third-party insurance policy.</p>
<b>Liquidation and Final Distribution of Trust Assets</b>	<p>Upon dissolution and liquidation of the Indemnity Trust, any assets remaining in the Indemnity Trust Account will be transferred to the Claimant Trust; provided, however, if the Claimant Trust is no longer in existence, then such distribution of the Indemnity Trust assets will be made according to the same distribution methodology contemplated in Section 9.2 of the Claimant Trust Agreement (or the successor to such numbered section) on the effective date of the termination of the Claimant Trust.</p>
<b>Limitations on Transferability</b>	<p>A beneficial interest in the Indemnity Trust may not be transferred, assigned or hypothecated without the consent of the Indemnity Trust Administrator in his sole and absolute discretion, provided that such transfer, assignment or hypothecation does not confer upon such assignee status as a Beneficiary under the Indemnity Trust. The Indemnity Trust Administrator may impose such conditions and other terms upon any transfer, assignment or hypothecation as he considers appropriate, in his sole and absolute discretion.</p> <p>In the event of an assignment, the foregoing limitations on transferability will continue to apply in all respects to such beneficial interest and will be binding on the assignee of such beneficial interest.</p>
<b>Governance of the Indemnity Trust</b>	<p>Consistent with the Indemnity Trust’s purpose as a collateral mechanism, it is not contemplated that the Indemnity Trust will need any comprehensive governance system. For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the</p>

	<p>Indemnity Trust Administrator, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee.</p> <p>Consistent with the foregoing, the Indemnity Trust Administrator shall have the power to take any actions the Indemnity Trust Administrator, in his sole and absolute discretion, deems desirable or necessary in connection with the operation of the Indemnity Trust.</p> <p>The Indemnity Trust Administrator will have the power and authority to retain such experts and other advisors, including financial consultants and legal counsel, as he considers appropriate to address any matter relating to the Indemnity Trust. Without limiting the generality of the foregoing, to the extent the Indemnity Trust Administrator identifies any conflict of interest in his roles as the Claimant Trustee, on the one hand, and the Indemnity Trust Administrator, on the other, or otherwise relating to the Indemnity Trust, the Indemnity Trust Administrator may retain such experts, including legal counsel, as he, in his sole and absolute discretion, considers appropriate to evaluate and resolve any such conflict of interest. The cost of any such advisors/experts/counsel will be paid by the Claimant Trust, and if not paid in a timely fashion, can represent a claim for indemnity under the Indemnity Trust Agreement (see “Withdrawal of Trust Assets”). Beneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account, other than the Indemnity Trust Administrator in such capacity.”</p>
<p><b>Indemnification of Indemnity Trustee</b></p>	<p>The Indemnity Trustee and the Indemnity Trust Administrator will be provided customary indemnification rights typical for a collateral trust of this type.</p>
<p><b>Nature and Evidence of Beneficial Interest</b></p>	<p>A beneficial interest in the Indemnity Trust will not entitle a Beneficiary to any direct right, title or interest in or to the specific assets held in the Indemnity Trust Account, and no Beneficiary will have any right to call for a partition or division of such assets.</p> <p>A beneficial interest in the Indemnity Trust will not be evidenced by any certificate, security, receipt or any other instrument. The Indemnity Trust Administrator will maintain a record of the Beneficiaries and their respective beneficial interests in the Indemnity Trust.</p>

	Notwithstanding the foregoing, the Indemnity Trustee or the Indemnity Trust Administrator will be authorized to provide evidence of beneficiary status upon request by a Beneficiary.
<b>Investment of Trust Assets</b>	The cash or other liquid assets in the Indemnity Trust Account will be invested in a manner consistent with that set forth in Section 3.4 of the Claimant Trust Agreement; provided, however, the approval of the Oversight Board will not be needed. Such investment function will be overseen by the Indemnity Trust Administrator and effected by the Indemnity Trustee.
<b>Governing Law</b>	The Indemnity Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.
<b>Venue</b>	Each of the parties consents and submits to the exclusive jurisdiction of the Bankruptcy Court of the Northern District of Texas for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Indemnity Trust Agreement or any act or omission of the Indemnity Trustee (acting in his capacity as the Indemnity Trustee or in any other capacity contemplated by this Indemnity Trust Agreement); provided, however, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas

# Exhibit 5



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 21, 2021

  
United States Bankruptcy Judge

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Case No. 19-34054</b>
	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Re: Docket No. 2491</b>
	§	

**ORDER APPROVING DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I)  
AUTHORIZING THE (A) CREATION OF AN INDEMNITY SUBTRUST AND (B)  
ENTRY INTO AN INDEMNITY TRUST AGREEMENT AND (II) GRANTING  
RELATED RELIEF**

Upon the *Debtor’s Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (b) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief* (the “Motion”),<sup>1</sup> and the Court finding that: (i) this Court has jurisdiction over this matter

<sup>1</sup> All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Trust Agreement and the consummation of the transactions contemplated thereby is an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is **GRANTED** as set forth herein and as modified on the record to provide that the Indemnification Note will be unsecured.

2. Pursuant to 11 U.S.C. §§ 363(b) and 105(a), the Debtor is authorized (i) to enter into and perform under the Trust Agreement and consummate the transactions contemplated thereby, including the creation of the Indemnity Subtrust., and (ii) to negotiate, prepare, execute, and deliver all documents and take such other action as may be necessary or appropriate to implement, effectuate, and fully perform its obligations as and when they are incurred and come due under the Trust Agreement.

3. The terms and provisions of this Order shall be binding in all respects upon all parties in this chapter 11 case, the Debtor, its estate, and all successors and assigns thereof.

4. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**### END OF ORDER ###**

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

**In re:**

**HIGHLAND CAPITAL  
MANAGEMENT, L.P.**

**Debtor.**

§  
§  
§  
§  
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§

**Chapter 11**

**Case No. 19-34054-sgj11**

**ORDER GRANTING HUNTER MOUNTAIN INVESTMENT TRUST’S MOTION TO  
ALTER OR AMEND ORDER, TO AMEND OR MAKE ADDITIONAL FINDINGS, FOR  
RELIEF FROM ORDER, OR, ALTERNATIVELY, FOR NEW TRIAL UNDER  
FEDERAL RULES OF BANKRUPTCY PROCEDURE 7052, 9023, AND 9024**

The Court, having considered Hunter Mountain Investment Trust’s Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief (“Motion to Alter and for Other Relief”), filed by Hunter Mountain Investment Trust, both in its individual capacity and derivatively on behalf of the Reorganized Debtor,

Highland Capital Management, L.P., and the Highland Claimant Trust,<sup>1</sup> finds that the Motion to Alter and for Other Relief should be GRANTED. It is, therefore:

**ORDERED** that the Motion to Alter and for Other Relief is **GRANTED**, and the Court will issue further rulings and reasons in connection herewith.

**### End of Order ###**

Submitted by:

PARSONS MCENTIRE MCCLEARY PLLC

/s/ Sawnie A. McEntire

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***Counsel for Hunter Mountain Investment Trust***

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<sup>1</sup> And, in all capacities and alternative derivative capacities asserted in HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3815, and 3816] ("Emergency Motion"), and the supplement to the Emergency Motion [Bankr. Dkt. No. 3760] and the draft Complaint attached to the same [Bankr. Dkt. No. 3760-1].

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter  
Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

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**APPELLANT RECORD**



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

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

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

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

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

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 4**

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

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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 5**

DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

*Vol. 10*

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*002765*

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 4, 2023

  
United States Bankruptcy Judge

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

IN RE:

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Reorganized Debtor.

§  
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§

Chapter 11

Case No. 19-34054-sgj-11

**ORDER DENYING MOTION OF HUNTER MOUNTAIN INVESTMENT TRUST  
SEEKING RELIEF PURSUANT TO FEDERAL RULES OF BANKRUPTCY  
PROCEDURE 7052, 9023, AND 9024**

On September 8, 2023, Hunter Mountain Investment Trust (“HMIT”) filed its *Motion to Alter or Amend Order, To Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief* (hereinafter, the “Motion”).<sup>1</sup> In the Motion, HMIT requests that the court alter or amend its findings set forth in its 105-page Memorandum Opinion and Order, dated August

<sup>1</sup> Bankr. Dkt. No. 3905

25, 2023 (hereinafter, the “Order Denying HMIT’s Motion for Leave”)<sup>2</sup> in which this court, in the exercise of its “gatekeeping” function pursuant to the Gatekeeper Provision<sup>3</sup> of the Debtors’ confirmed Plan<sup>4</sup> and pre-confirmation Gatekeeper Orders, denied HMIT’s *Emergency Motion for Leave To File Verified Adversary Proceeding*.<sup>5</sup> The Order Denying HMIT’s Motion for Leave was issued following an evidentiary hearing on June 8, 2023.

HMIT now wants the bankruptcy court to reconsider certain findings and conclusions (or make additional ones—or even grant a new hearing) with regard to the Order Denying HMIT’s Motion for Leave—specifically pertaining to the subject of HMIT’s lack of standing (which was one of multiple reasons the court gave for issuing the Order Denying HMIT’s Motion for Leave). The ground articulated by HMIT is as follows: “because post-hearing financial disclosure filings in the bankruptcy matter further evidence [sic] that the court’s standing determinations are incorrect and should be corrected.” Motion, at ¶ 3.<sup>6</sup> In other words, HMIT suggests that certain “post-hearing financial disclosure filings” filed in the main Highland bankruptcy case by the Reorganized Debtor (on July 6, 2023<sup>7</sup> and July 21, 2023<sup>8</sup>) somehow now demonstrate that HMIT, indeed, has standing to pursue the adversary proceeding that it sought leave to file.

The Motion is denied. First, the court sees no reasonable grounds to reopen the record with these “post-hearing financial disclosures.” For one thing, the “post-hearing financial disclosure filings” are not materially different than information that was already on file in the bankruptcy

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<sup>2</sup> Bankr. Dkt. Nos. 3903 & 3904.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Order Denying HMIT’s Motion for Leave.

<sup>4</sup> The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Bankr. Dkt. No. 1943] on February 22, 2021.

<sup>5</sup> Bankr. Dkt. Nos. 3699, 3815, 3816, and 3760.

<sup>6</sup> HMIT attached the “post-hearing financial disclosure filings in the bankruptcy matter” as exhibits to the Motion. See Exhibits 2 and 3 to the Motion.

<sup>7</sup> Bankr. Dkt. No. 3872.

<sup>8</sup> Bankr. Dkt. Nos. 3888 and 3889.

case for all to see, before the June 8, 2023 hearing. *See* Bankr. Dkt. Nos. 3756 & 3757 (routine Post-Confirmation Reports, filed by the Reorganized Debtor on April 21, 2023, which show liabilities, disbursements, and “Remaining investments, notes, and other assets”—albeit without specific values ascribed to the latter). So, to the extent HMIT is arguing that the “post-hearing financial disclosure filings” are something akin to newly discovered evidence or otherwise a ground for granting a new hearing or altering findings, HMIT’s argument lacks merit. Moreover, even if this court were to consider the “post-hearing financial disclosure filings,” the court disagrees with HMIT’s central argument that they demonstrate that HMIT’s contingent interest is “in the money” and, thus, that it has both constitutional and prudential standing to pursue the adversary proceeding it wants to file. Notably, HMIT does not give proper attention to the voluminous supplemental notes in the “post-hearing financial disclosure filings” that are integral to understanding the numbers therein. For example, as mentioned in Note 5 therein, the administrative expenses and legal fees of the Reorganized Highland and the post-confirmation trust continue to deplete their assets, due to the fact that “(b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected.” This significant and widespread litigation results in massive indemnification obligations, as well as massive, continuing legal fees and expenses. The assets shown in the “post-hearing financial disclosure filings” will only be available for distribution after satisfaction of all legal fees and expenses and indemnity obligations. As also noted in Note 5 therein, it is expected that the Highland post-confirmation trust and its subsidiaries will operate at an operating loss prospectively. The information in the “adjustments” column of the assets section of the post-hearing financial disclosures “does not assume any expected future operating cash burn, which is expected to be significant.” Additionally, as indicated in Note 6, sometimes Highland has been

unable to obtain full and complete information regarding asset values for inclusion in the post-hearing financial disclosures—thus impacting the accuracy of some valuations used. For example,

The value of SE Multifamily Holdings LLC maintained on this balance sheet is \$15.7 million, which is a component of the “Investments” line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities’ previous disclosures of this interest at values of \$20 million and \$12 million, Highland also received interest from Dondero to acquire the interest for \$3.8 million, among other assets. . . . Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero controlled entities have not provided to date.

In summary, HMIT argues no reasonable grounds to justify any of the relief sought in the Motion.

Accordingly,

**IT IS ORDERED** that the Motion be, and hereby is, **DENIED**.

**###END OF ORDER###**

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	<b>Chapter 11</b>
	§	
<b>Reorganized Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	

**HUNTER MOUNTAIN INVESTMENT TRUST’S  
SECOND AMENDED NOTICE OF APPEAL**

Pursuant to 28 U.S.C. § 158(a) and Federal Rules of Bankruptcy Procedure 8001-8002, Appellant/Movant Hunter Mountain Investment Trust (“HMIT”), both in its individual capacity and derivatively on behalf of the Reorganized Debtor, Highland Capital Management, L.P., and the Highland Claimant Trust,<sup>1</sup> appeals to the United States District Court for the Northern District of Texas, Dallas Division, from this Court’s August 25, 2023 Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”: Denying Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding (Docs. 3903-3904) (attached to this notice as Exhibits 1 and 2) (the “Final Order”), and all associated interlocutory orders or decisions that merged into or preceded the Final Order, including but not limited to the following:

- March 31, 2023 Order Denying Application for Expedited Hearing (Doc. 3713) (attached to this notice as Exhibit 3);
- May 11, 2023 Order Fixing Briefing Schedule and Hearing Date with Respect to Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding as Supplemented (Doc. 3781) (attached to this notice as Exhibit 4);

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<sup>1</sup> And, in all capacities and alternative derivative capacities asserted in HMIT’s Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. Nos. 3699, 3815, and 3816] (“Emergency Motion”), and the supplement to the Emergency Motion [Dkt. No. 3760] and the draft Complaint attached to the same [Dkt. No. 3760-1].

- May 22, 2023 Order Pertaining to the Hearing on Hunter Mountain Investment Trust’s Motion for Leave to File Adversary Proceeding (Doc. 3787) (attached to this notice as Exhibit 5) and (Doc. 3790) (attached to this notice as Exhibit 5a);
- May 26, 2023 Order Regarding Hunter Mountain Investment Trust’s Emergency Motion for Expedited Discovery Or, Alternatively, For Continuance of the June 8, 2023 Hearing (Doc. 3800) (attached to this notice as Exhibit 6);
- Evidentiary and other oral rulings, including but not limited to rulings that did not admit evidence and exhibits offered by HMIT, or admitted the same for only limited purposes, and rulings associated with expert testimony, made at the June 8, 2023 Hearing;
- June 16, 2023 Memorandum Opinion and Order Granting Joint Motion to Exclude Expert Evidence (Doc. 3853) (attached to this notice as Exhibit 7); and
- July 5, 2023 Order Striking HMIT’s Evidentiary Proffer Pursuant to Rule 103(a)(2) and Limiting Briefing (Doc. 3869), including the appended email ruling (attached to this notice as Exhibit 8).

HMIT also appeals the October 4, 2023 Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Doc. 3936) (attached to this notice as Exhibit 9).

The names of all other parties to the orders and decisions appealed from and their respective counsel are as follows:

- Appellant/Movant HMIT, represented by:

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- Appellees/Non-movants Highland Capital Management, L.P., and the Highland Claimant Trust, represented by:

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- Appellee/Non-movant James P. Seery, Jr., represented by:

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- Appellees/Non-movants Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC, represented by:

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Dated: October 19, 2023

Respectfully Submitted,

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*Attorneys for Hunter Mountain  
Investment Trust*

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was served via ECF notification on October 19, 2023, on all parties receiving electronic notification.

/s/ Sawnie A. McEntire  
Sawnie A. McEntire

3133169.1

# Exhibit 1



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed August 25, 2023

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

**IN RE:**

**HIGHLAND CAPITAL MANAGEMENT, L.P.,**

**Reorganized Debtor.**

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**Chapter 11**

**Case No. 19-34054-sgj-11**

**MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN “GATEKEEPER  
PROVISION” AND PRE-CONFIRMATION “GATEKEEPER ORDERS”: DENYING  
HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY MOTION FOR  
LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING<sup>1</sup>  
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]**

**I. INTRODUCTION**

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. (“Highland” or “Reorganized Debtor”).

<sup>1</sup> On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland’s Plan<sup>2</sup>—the Plan having been confirmed on February 22, 2021.<sup>3</sup> The Plan was never stayed; it went effective on August 11, 2021 (“Effective Date”), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”), in late summer 2022, including an approval of the so-called Gatekeeper Provision<sup>4</sup> therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the “Motion for Leave”) filed by a movant known as Hunter Mountain Investment Trust (“HMIT”).

A. *Who is the Movant, HMIT?*

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland’s Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust (“Claimant Trust”) created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

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<sup>2</sup> Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

<sup>3</sup> The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Confirmation Order”)[Bankr. Dkt. No. 1943].

<sup>4</sup> In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, “revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan’s exculpation, and affirm[ing] on all remaining grounds.” *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at \*1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, “for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion,” the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section “IV(E)(2) – *Injunction and Gatekeeper Provisions*” of the original opinion: “The injunction and gatekeeper provisions are, on the other hand, perfectly lawful.” was replaced with “We now turn to the Plan’s injunction and gatekeeper provisions.” In all other respects, the Fifth Circuit panel’s original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than \$62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

*B. What Does the Movant HMIT Seek Leave to File?*

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")<sup>5</sup> in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of \$365 million face amount of *allowed* unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"<sup>6</sup> and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

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<sup>5</sup> In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

<sup>6</sup> The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. *Why Does HMIT Need to Seek Leave?*

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.<sup>7</sup> The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."<sup>8</sup>

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<sup>7</sup> To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

<sup>8</sup> See *Highland Capital*, 48 F.4th at 427, 435.

*D. Some Further Context Regarding Post-Confirmation Litigation Generally.*

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland’s non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an *emergency* hearing on the instant Motion for Leave (HMIT had sought a setting on three-days’ notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and “Active Dondero-Related Litigation” matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties (“Highland,” the “Claimant Trust,” and “Seery”) in various other state, federal, and foreign jurisdictions.<sup>9</sup>

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero’s unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to “burn down the place” after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 (“Rule 202”). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

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<sup>9</sup> See Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of “Active Dondero-Related Litigation” and noting that the list is “a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit.”). Just since the filing by the Highland Parties of the list, *three* of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court’s dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court’s dismissal of an appeal by NexPoint Advisors, L.P. (“NexPoint”) of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a “person aggrieved” by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court’s dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a “person aggrieved” by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit’s ruling on February 21, 2023, affirming the district court’s dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court’s affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor’s largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). See *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly “rubber stamp” Seery’s “excessive compensation” as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful “insider trading” of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and “insider trading” to the Texas State Securities Board (“TSSB”) and the Executive Office of the United States Trustee (“EOUST”).

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are “colorable” claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 (“June 8 Hearing”), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT’s reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT’s request for leave to pursue its Proposed Claims. The court’s reasoning is set forth below.

## II. BACKGROUND

### A. *Highland’s Bankruptcy Case, Dondero’s Removal as CEO, and the Plan*

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada (“Okada”). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland’s equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. (“Strand”), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the “Petition Date”), Highland, with Dondero in control<sup>10</sup> and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the “Committee”) (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.<sup>11</sup> As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,<sup>12</sup> and three independent directors (“Independent Directors”) were

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<sup>10</sup> Mark Okada resigned from his role with Highland prior to the Petition Date.

<sup>11</sup> This order is hereinafter referred to as the “January 2020 Order” and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

<sup>12</sup> Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland’s motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor’s perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers’ (“D&O”) insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court’s prior authority. The gatekeeper provision approved by the court in its January 9 Order states,<sup>13</sup>

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so “subject at all times to the supervision, direction and authority of the Independent Directors” and to his agreement to “resign immediately” “[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee”<sup>14</sup> and to “not cause any Related Entity to terminate any agreements with the Debtor.”<sup>15</sup> The court later

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<sup>13</sup> January 2020 Order, 3-4, ¶ 10.

<sup>14</sup> January 2020 Order, 3, ¶ 8.

<sup>15</sup> *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,<sup>16</sup> which included essentially the same “gatekeeper” language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero’s plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.<sup>17</sup> As the Fifth Circuit described the situation, after Dondero’s plans failed “he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital’s management, threatening employees, and canceling trades between Highland Capital and its clients.”<sup>18</sup> On October 9, 2020, Dondero resigned from all positions with the Debtor and its

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<sup>16</sup> See the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 (“July 2020 Order”) [Bankr. Dkt. No. 854].

<sup>17</sup> According to Seery’s credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to “burn the place down” if his proposed plan was not accepted. See Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

<sup>18</sup> *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at \*1, \*26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero’s purported threats and disruptions to the Debtor’s operations.<sup>19</sup>

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the “Plan”) [Bankr. Dkt. No. 1808] on January 22, 2021.<sup>20</sup> Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the “Dondero Parties”) at the time of the confirmation hearing,<sup>21</sup> which was held over two days in early February 2021. The Plan is essentially an “asset monetization” plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland’s various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles (“CLOs”) and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

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June 7, 2021) where this court “h[eld] Dondero in civil contempt, sanctioning him \$100,000, and comparing this case to a ‘nasty divorce.’”)

<sup>19</sup> See Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as “Highland Ex. \_\_\_” and to exhibits offered and admitted by HMIT as “HMIT Ex. \_\_\_.”

<sup>20</sup> The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 (“Disclosure Statement”) [Bankr. Dkt. No. 1473].

<sup>21</sup> The only other objection remaining was the objection of the United States Trustee to the Plan’s exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board (“CTOB”), and pursuant to the terms of the Plan and the Claimant Trust Agreement (“CTA”),<sup>22</sup> the CTOB approved Seery’s compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.<sup>23</sup> Seery’s compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder’s pro rata share of a contingent interest in the Claimant Trust (“Contingent Claimant Trust Interest”), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

*B. Dondero Communicates Alleged Material Non-Public Information (“MNPI”) to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers “Rubber Stamp” His Compensation as Claimant Trustee Post-Confirmation*

1. The December 17, 2020 MGM Email

Between Dondero’s forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery<sup>24</sup> an email

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<sup>22</sup> Highland Ex. 38

<sup>23</sup> The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). See Joint Opposition ¶ 79.

<sup>24</sup> Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, “communicating . . . with any Board member” (including Seery) without including Debtor’s counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to “Morris Dec. Ex. \_” are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the “MGM Email”) that featured prominently in HMIT’s Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information (“MNPI”) regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. (“MGM”), likely by either Amazon or Apple.<sup>25</sup> At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly “insider” information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).<sup>26</sup> A timeline of events (in late 2020) in the weeks leading up to Dondero’s MGM Email to Seery, following Dondero’s departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor’s trading activities by demanding—with no legal basis—that Seery cease selling certain assets;<sup>27</sup>
- November 24: Bankruptcy Court enters an Order approving the Debtor’s Disclosure Statement, scheduling the confirmation hearing on the Debtor’s Plan for January 13, 2021, and granting related relief;<sup>28</sup>
- November 24–27: Dondero personally interferes with the Debtor’s

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*of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.’s Joint Opposition to Hunter Mountain Investment Trust’s Motion for Leave to File Verified Adversary Proceeding*, Bankr. Dkt. No. 3784.

<sup>25</sup> See Proposed Complaint ¶ 45.

<sup>26</sup> See *id.* ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”); ¶ 4 (“As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery’s ongoing compensation – to Seery’s benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.”).

<sup>27</sup> See Highland Ex. 14, Dondero-Related Entities’ October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

<sup>28</sup> See Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;<sup>29</sup>

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero’s two non-debtor affiliates, NexPoint Advisors, L.P. (“NexPoint”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”; together with NexPoint, the “Advisors”),<sup>30</sup>
- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than \$60 million—this was part of creating liquidity for the Debtor’s Plan;<sup>31</sup>
- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: “*Be careful what you do -- last warning*,”<sup>32</sup>
- December 10: Dondero’s interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order (“TRO”) against Dondero;<sup>33</sup>
- December 16: This court denies as “frivolous” a motion filed by certain affiliates of Dondero, in which they sought “temporary restrictions” on certain asset sales;<sup>34</sup> and
- December 17: Dondero sends the unsolicited MGM Email<sup>35</sup> to Seery, which violates the TRO entered just a week earlier.<sup>36</sup>

<sup>29</sup> See Highland Ex. 15, 30-36.

<sup>30</sup> Morris Decl. Ex. 17; see also Transcript of June 8, 2023 Hearing on HMIT’s Motion for Leave (“June 8 Hearing Transcript”), 273:23-24.

<sup>31</sup> Morris Decl. Exs. 18-21; see also June 8 Hearing Transcript, 273:23-274:1.

<sup>32</sup> Morris Decl. Ex. 22 (emphasis added); see also June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: “A: [T]his came after he threatened me. He threatened me in writing. I’d never been threatened in my career. I’ve never heard of anyone else in this business who’s been threatened in their career. So anything I would get from him, I was going to be highly suspicious.”).

<sup>33</sup> See Morris Decl. Ex. 23, *Order Granting Debtor’s Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

<sup>34</sup> See Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

<sup>35</sup> Highland Ex. 11.

<sup>36</sup> Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

[The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor’s counsel] being on it. Furthermore, Pachulski had advised Dondero’s counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line “Trading Restriction re MGM – material non public information” and stated:

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.<sup>37</sup>

Seery credibly testified at the June 8 Hearing that he was “highly suspicious” when he received the MGM Email. This was because, among other reasons, Dondero sent it *after*: (i) unsuccessful efforts to impede the Debtor’s trading activities (followed by the TRO); (ii) the “be careful what you do” text to Seery by Dondero; (iii) Highland’s termination of its shared service arrangements with Dondero’s various affiliated entities; (iv) the bankruptcy court’s approval of the disclosure statement; and (v) Highland’s demand to collect on the demand notes for which Dondero and his entities were liable.<sup>38</sup> Highland’s Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.<sup>39</sup> Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement<sup>40</sup> and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

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<sup>37</sup> Highland Ex. 11.

<sup>38</sup> June 8 Hearing Transcript, 273:1-274:4.

<sup>39</sup> June 8 Hearing, 215:21-216:9.

<sup>40</sup> See Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT’s Rule 202 petition in Texas state court for pre-suit discovery,<sup>41</sup> he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple’s interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades.***

It is noteworthy that *Dondero’s labeling of the MGM Email (in the subject line) as a communication containing “material non public information” did not make it so.* In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT’s Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally “take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]” because—as earlier noted—“MGM was already on the restricted list at Highland Capital . . . before I got to Highland.”<sup>42</sup> Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months<sup>43</sup> and that was officially

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<sup>41</sup> Highland Ex. 9 ¶ 3 (emphasis added).

<sup>42</sup> June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT’s counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that “it was probably a first-quarter event” and that “Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest” were not MNPI. *Id.*, 217:23-218:10. He testified that “it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter.” *Id.*, 219:3-7.

<sup>43</sup> See Highland Ex. 25 (“MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.”) (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest



them.”<sup>48</sup> Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed “inside” information to Seery in the MGM Email. He did not “say anything about Amazon hitting the price.” He did not say anything about the MGM board going into exclusive negotiations with Amazon “to culminate the merger with them.” Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why “[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price,” Dondero simply answered, “The only way you generally get something done at attractive levels in business is if two people are interested,” suggesting that he specifically *did not* communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM’s strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.<sup>49</sup>

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind ‘James Bond,’ Explores a Sale*, reported that MGM had “tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process,” and had “a market value of around \$5.5 billion, based on privately traded shares and including debt.” The Wall Street Journal Article reiterated

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<sup>48</sup> *Id.*, 161:10-14.

<sup>49</sup> June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage “has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks,” and (ii) “Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers.”<sup>50</sup> (*Id.* Ex. 27.) The Wall Street Journal’s reporting was picked up and expanded upon in other publications soon after.

For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is not enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM “hopes to spark a battle that could interest streaming services such as Amazon Prime”;<sup>51</sup>
- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that “it’s now become apparent that MGM is actually up on the auction block,” noting that the Wall Street Journal was “reporting that the studio has begun a formal sale process” and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;<sup>52</sup> and
- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.<sup>53</sup>

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

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<sup>50</sup> Highland Ex. 27.

<sup>51</sup> Highland Ex. 28.

<sup>52</sup> Highland Ex. 29.

<sup>53</sup> Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero’s Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT’s allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT’s and Dondero’s conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims (“Purchased Claims”) based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on “circumstantial” evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the “late spring” of 2021 concerning Farallon’s recent acquisition of certain claims in the Highland bankruptcy case.<sup>54</sup> Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.<sup>55</sup>

At the June 8 Hearing, HMIT offered Dondero’s testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn (“Linn”) and Raj Patel (“Patel”),

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<sup>54</sup> Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

<sup>55</sup> Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that “supported” the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the “sideshow” litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery’s assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes (“Dondero Notes”)<sup>56</sup> (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).<sup>57</sup> He testified that his purpose in taking these notes and in initiating the phone calls was that “[w]e’d been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,”<sup>58</sup> and further, on *voir dire* from the Proposed Defendants’ counsel, that the purpose of taking the notes was so that he had “a written record of the important points that [he] discussed . . . so I know how to address it the next time.”<sup>59</sup> The handwritten notes<sup>60</sup> stated:

<i>Raj Patel bought it because of Seery</i>	1
<i>50-70¢ not compelling</i>	2
<i>Class 8</i>	3
<i>Asked what would be compelling</i>	4
<i>-- No Offer</i>	5
<i>Bought in Feb/March timeframe</i>	6
<i>Bought assets w/ Claims</i>	7
<i>Offered him 40-50% premium</i>	8
<i>130% of cost; “Not Compelling”</i>	9
<i>No Counter; Told Discovery coming</i>	10

<sup>56</sup> HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero’s “present sense impression” of the telephone conversations.

<sup>57</sup> June 8 Hearing Transcript, 133:1-136:3.

<sup>58</sup> *See id.*, 133:13-23.

<sup>59</sup> *See id.* (on *voir dire*), 144:1838-145:4.

<sup>60</sup> HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero “that he bought it because Seery told him to buy it and they had made money with Seery before”<sup>61</sup> and that Farallon “bought [the claim] because he was very optimistic regarding MGM”<sup>62</sup> before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero’s first call with Linn and lines 9 and 10 referring to his second call with Linn.<sup>63</sup> Dondero testified that the “50-70¢” in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon’s<sup>64</sup> claims because “[w]e knew that they had – that the claims had traded around 50 cents” and “[w]e wanted to prevent the \$5 million-a-month burn” (referring to attorney’s fees in the Highland case) and that “not compelling Class 8” in lines 2-3 referred to Linn’s response to him that the offer was not compelling.<sup>65</sup> Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn’s response that “he had no offer.”<sup>66</sup> Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending \$5 million a month on legal fees, Farallon should want to sell its claims and Linn’s alleged response that “Seery told him it was worth a lot more.”<sup>67</sup> Lastly, Dondero testified on direct examination

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<sup>61</sup> June 8 Hearing Transcript, 134:7-10, 135:13-22.

<sup>62</sup> *Id.*, 139:3-11.

<sup>63</sup> *Id.*, 136:4-138:16.

<sup>64</sup> As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

<sup>65</sup> June 8 Hearing Transcript, 136:4-16.

<sup>66</sup> *Id.*, 136:17-23.

<sup>67</sup> *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.<sup>68</sup>

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM; (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo*; or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.<sup>69</sup> Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only **believed** Seery **must have** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust<sup>70</sup> and that he never discussed Seery's compensation with Farallon.<sup>71</sup>

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

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<sup>68</sup> *Id.*, 138:8-22.

<sup>69</sup> *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

<sup>70</sup> *Id.*, 200:13-201:1.

<sup>71</sup> *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.<sup>72</sup>

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition (“First Rule 202 Petition”) he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon’s purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims “sight unseen—relying entirely on Seery’s advice solely because of their prior dealings.”<sup>73</sup> Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that “On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery’s say-so because they had made so much money in the past when Seery told them to purchase claims” and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.<sup>74</sup>

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<sup>72</sup> Highland Ex. 7.

<sup>73</sup> *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

<sup>74</sup> *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:<sup>75</sup>

Last year, I called Farallon’s Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that “I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds,” and that “[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, “I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee.”<sup>76</sup> Dondero attached as Exhibit A to his declaration a letter from Douglas Draper (“Draper”), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that “[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors’ Committee] in the bankruptcy of [Highland],” and later noted that he “became involved in Highland’s bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary.”<sup>77</sup> Mr. Draper laid out the same allegations of insider claims trading, breach of

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<sup>75</sup> Highland Ex. 5, ¶ 2.

<sup>76</sup> *Id.*, ¶¶ 3-4.

<sup>77</sup> *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.<sup>78</sup> The U.S. Trustee’s office took no action. Dondero made a second and third attempt to get the U.S. Trustee’s office to conduct an investigation into the same allegations laid out in Draper’s letter, this time in “follow-up” letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina (“Rukavina”), in which Rukavina wrote “to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy.”<sup>79</sup> Again, the U.S. Trustee’s office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition *filed by HMIT* (“Second Rule 202 Petition”), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero’s unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.<sup>80</sup> In this new sworn statement, Dondero describes for the first time the “call” he had with Linn as having been “phone calls” with Patel and Linn and *mentions MGM* and Farallon’s alleged optimism about the *expected sale of MGM*.<sup>81</sup>

In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC (“Farallon”), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

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<sup>78</sup> *Id.*, Ex. A, 6-11.

<sup>79</sup> HMIT Ex. 61.

<sup>80</sup> Highland Ex. 9.

<sup>81</sup> *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.<sup>82</sup>

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are “colorable,” stated in its Motion for Leave that “[t]he Court also should be aware that the Texas States [sic] Securities Board (“TSSB”) opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT’s position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely ‘colorable.’”<sup>83</sup> But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter (“TSSB Letter”) to Highland, informing it that “[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.”<sup>84</sup> HMIT’s counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing “on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry.”<sup>85</sup> The court overruled HMIT’s objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB “investigation” as relevant evidence the court “should be aware” of in making its determination of whether the Proposed Claims were “colorable.”<sup>86</sup>

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<sup>82</sup> Highland Ex. 10.

<sup>83</sup> Motion for Leave, ¶ 37.

<sup>84</sup> See Highland Ex. 33.

<sup>85</sup> June 8 Hearing Transcript, 323:22-324:3.

<sup>86</sup> *Id.*, 324:4-328:2.

*C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims*

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

<b>Claimant(s)</b>	<b>Date Filed/ Claim No.</b>	<b>Asserted Amount</b>	<b>Claim Settled/Allowed? If so, Amount</b>	<b>Date Filed/ Rule 3001 Notice Dkt. No.</b>
Acis Capital Management LP and Acis Capital Management, GP LLC (together, “Acis”)	12/31/2019 Claim No. 23	\$23,000,000	Yes <sup>87</sup>  \$23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”)	4/3/2020 Claim No. 72	\$190,824,557	Yes <sup>88</sup>  \$137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the “HarbourVest Parties”)	4/8/2020  Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes <sup>89</sup>  \$80,000,000 in aggregate (\$45,000,000 General Unsecured Claim, and \$35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

<sup>87</sup> Bankr. Dkt. No. 1302. The Debtor’s settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

<sup>88</sup> Bankr. Dkt. No. 1273.

<sup>89</sup> Bankr. Dkt. No. 1788. The Debtor’s settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the “UBS Parties”)	6/26/2020  Claim Nos. 190, 191	\$1,039,957,799.40	Yes <sup>90</sup>  \$125,000,000 in aggregate (\$65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)
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HMIT insists that it “made no sense” for the Claims Purchasers to buy the Purchased Claims because “the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk,” and “their investment was projected to yield a small return with virtually no margin for error.”<sup>91</sup> Dondero testified that it was *his* view that there was insufficient information in the public to justify the claims purchases.<sup>92</sup> But, HMIT’s arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT’s own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.<sup>93</sup> Taking into account the face amount of the allowed claims, the Claims Purchasers’ projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value <sup>94</sup>	Purchaser	Purchase Price	Projected Profit
Redeemer	\$137.0	\$0.0	\$97.71	Stonehill	\$78.0	\$19.71
Acis	\$23.0	\$0.0	\$16.4	Farallon	\$8.0	\$8.40

<sup>90</sup> Bankr. Dkt. No. 2389. The Debtor’s settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

<sup>91</sup> Proposed Complaint, ¶ 3.

<sup>92</sup> June 8 Hearing Transcript, 187:3-7 (“Q: And it’s your testimony that there wasn’t sufficient information in the public for them to buy – this is your view – that there wasn’t sufficient information in the public to justify their purchases. Is that your view? A: Correct.”).

<sup>93</sup> *Id.*, ¶ 42.

<sup>94</sup> “Ascribed Value” is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	\$45.0	\$35.0	\$32.09	Farallon	\$27.0	\$5.09
UBS	\$65.0	\$60.0	\$46.39	Stonehill & Farallon	\$50.0	(\$3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the “late spring” of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.<sup>95</sup> Based on an aggregate purchase price of \$113 million for these three claims, the Claims Purchasers would have expected to net over \$33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT’s and Dondero’s assertions that it did not “make any sense” for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay **30 percent more** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon’s purchase of the claims.<sup>96</sup> Dondero essentially testified that he wanted to purchase Farallon’s claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill *as creditors*, but instead he wanted to purchase the claims because “if we owned all the claims, it would settle the case.”<sup>97</sup>

<sup>95</sup> See Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged “*quid pro quo*” was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. See, Highland Ex. 34, *Amazon’s \$8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

<sup>96</sup> June 8 Hearing Transcript, 187:8-11.

<sup>97</sup> *Id.*, 187:12-189:10.

*D. Fifth Circuit’s Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court’s Order Approving Highland’s Motion to Conform Plan*

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting “the remoteness of their economic interests” that “[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan.”<sup>94</sup> The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland’s employees (with certain exceptions); Seery as Highland’s CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all “Related Persons.” The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a “gatekeeper” to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:<sup>98</sup>

No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents *a colorable claim of any kind*, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

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<sup>98</sup> Plan, 50-51 (emphasis added).

authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both “colorable” *and* a claim for “willful misconduct or gross negligence,” effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of “willful misconduct or gross negligence,” whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing *any kind of claim* against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are “colorable.”<sup>99</sup>

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<sup>99</sup> It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--e.g., the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed<sup>100</sup> the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan’s exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the “Protection Provisions”) impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)’s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, “affirm[ed] the confirmation order in large part” and “reverse[d] *only insofar as the plan exculpates* certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties *from the plan’s exculpation*, and affirm[ed] on all remaining grounds.”<sup>101</sup> The Fifth Circuit specifically found the “injunction and gatekeeping provisions [to be] sound” and found that it was only “the *exculpation* of certain non-debtors” that “exceed[ed] the bankruptcy court’s authority,” agreeing with the bankruptcy court’s conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties” in part, and only disagreeing to the extent that the *exculpation* provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and “revers[ing] and strik[ing] the few unlawful parts

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<sup>100</sup> On appeal, the appellant funds (“Funds”), whom this court found to be “owned and/or controlled” by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court’s factual finding “because it threatens the Funds’ compliance with federal law and damages their reputations and values” and because “[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him.” *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the “clear error” standard of review, the Fifth Circuit “le[ft] the bankruptcy court’s factual finding undisturbed” because “nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are ‘owned and/or controlled by [Dondero].’” *Id.* at 434-35.

<sup>101</sup> See *supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the “Motion for Rehearing”) on September 2, 2022. The movants had asked the Fifth Circuit to “narrowly amend the [initial] Opinion in order to confirm the Court’s holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute ‘Protected Parties’).” In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would “reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan’s exculpation, and affirm on all remaining grounds.” *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan’s *exculpation provision*.<sup>102</sup> The Fifth Circuit then remanded to the Bankruptcy Court “for further proceedings in accordance with the opinion.”<sup>103</sup>

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that “those orders have the effect of exculpating the Independent Directors and Seery in his executive capacities” such that “[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors’ agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders.”<sup>104</sup>

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit’s mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit’s ruling: narrow the defined term for “Exculpated Parties” to read as follows:

“Exculpated Parties” means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit’s mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit’s ruling required more surgery on the Plan than simply narrowing the defined term “Exculpated Parties.” On February 27, 2023, this court entered its order granting

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<sup>102</sup> *Id.* at 435.

<sup>103</sup> *Id.* at 440. The Fifth Circuit’s docket reflects that it issued its Judgment and mandate on September 12, 2022.

<sup>104</sup> *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, “To the extent Appellants seek to roll back the protections in the bankruptcy court’s January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded.” *Id.*

Highland’s motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of “Exculpated Parties” – and no more.<sup>105</sup> The objecting parties’ direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

*E. HMIT’s Motion for Leave*

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint (“Initial Proposed Complaint”) and two sworn declarations of Dondero that were attached as “objective evidence” in “support[ ]” of the Motion for Leave,<sup>106</sup> and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a “supplement” to its Motion to Leave (“Supplement”),<sup>107</sup> to which it attached a revised proposed verified complaint (“Proposed Complaint”)<sup>108</sup> as Exhibit 1-A to the Motion for Leave and stated that “[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action.”<sup>109</sup> The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).<sup>110</sup>

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<sup>105</sup> Bankr. Dkt. No. 3672.

<sup>106</sup> Bankr. Dkt. No. 3699.

<sup>107</sup> Bankr. Dkt. No. 3760.

<sup>108</sup> See *supra* note 5.

<sup>109</sup> Supplement ¶ 1.

<sup>110</sup> Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding *the post-confirmation, pre-Effective Date purchase of allowed unsecured claims*. The Proposed Defendants would be:

**Seery**, who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland’s CRO during the case, then CEO, and, also, an Independent Board Member of Highland’s general partner during the Highland case). Seery is best understood as the man who took Dondero’s place running Highland—per the request of the Committee.

**Claims Purchasers**, who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC (“Farallon”); Muck Holdings, LLC (“Muck”), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC (“Stonehill”); and Jessup Holdings, LLC (“Jessup”), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the “Claims Purchasers”). The Claims Purchasers purchased \$240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another \$125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk’s docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).

**John Doe Defendants Nos. 1-10**, which are described to be “currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.”

**Highland**, as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

**Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

**HMIT**, which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT’s limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

**Highland**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

**Claimant Trust**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.<sup>111</sup> The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that “wrongful conduct occurred” and “improper trades” were made.<sup>112</sup> HMIT believes the Claims Purchasers paid around \$160 million for the \$365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland’s Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

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<sup>111</sup> In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

<sup>112</sup> Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months *before* certain of their claims—the UBS claims—were purchased).<sup>113</sup> In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor’s estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery’s allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers’ claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and “innocent stakeholders” who were allegedly injured by Seery’s and the Claims Purchasers’ alleged conspiratorial and

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<sup>113</sup> The MGM-Amazon deal was ultimately consummated in March 2022 for approximately \$6.1 billion, net of cash acquired, plus approximately \$2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery’s pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that “[t]he attached Adversary Proceeding alleges claims which are substantially more than ‘colorable’ based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty.”<sup>114</sup>

*F. Is HMIT Really Dondero by Another Name?*

The Proposed Defendants argue that HMIT’s Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick (“Patrick”), who has been HMIT’s administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were “colorable” such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT’s only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT’s first witness called in support of its motion, and the first

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<sup>114</sup> See Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that “Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court’s Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.”

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.<sup>115</sup> Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."<sup>116</sup> After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.<sup>117</sup> Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately \$62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.<sup>118</sup> Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.<sup>119</sup> He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

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<sup>115</sup> See June 8 Hearing Transcript, 113:10-25.

<sup>116</sup> *Id.*

<sup>117</sup> June 8 Hearing Transcript, 307:7-308:2.

<sup>118</sup> *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's \$62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

<sup>119</sup> *Id.*, 308:3-16.

Seery’s compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).<sup>120</sup> Patrick admitted that Dugaboy was paying HMIT’s attorneys’ fees pursuant to a settlement agreement between HMIT and Dugaboy.<sup>121</sup>

On cross-examination by HMIT’s counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.<sup>122</sup> HMIT’s counsel argued that the point of this questioning was that “they’re just trying to draw Dondero into this and – this vexatious litigant argument, and we’re just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.<sup>123</sup> But, Dondero and HMIT’s counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as “our” Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland’s Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT’s counsel referred to the order as “an order denying *our second*” Rule 202 Petition.<sup>124</sup> And, Dondero testified that his warning to Linn in May 2021 that “discovery was coming” was “my response to I knew they had traded on material nonpublic information” and that “I thought it would be a lot easier to get

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<sup>120</sup> *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT’s counsel objection to counsel’s line of questioning regarding Patrick’s personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT’s counsel argued (311:4-19) that the line of questioning was an “invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case.”

<sup>121</sup> *Id.*, 312:24-313:18.

<sup>122</sup> *Id.*, 315:3-9.

<sup>123</sup> *Id.*, 316:6-11.

<sup>124</sup> *Id.*, 58:11-13. The court overruled HMIT’s relevance objection and admitted Highland’s Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years” and that “*we’ve* been trying for two years to get . . . discovery.”<sup>125</sup>

Dondero’s use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero’s *modus operandi* since the “nasty breakup” between Dondero and Highland that culminated with Dondero’s ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland’s implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court’s finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court’s factual finding because, among other reasons, “[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him.”<sup>126</sup> Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT’s counsel and Patrick otherwise, Dondero is the driving force behind HMIT’s Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee’s office.

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<sup>125</sup> *Id.*, 191:5-25.

<sup>126</sup> *Highland Capital*, 48 F.4th at 434-435.

*G. Opposition to Motion for Leave: Arguing No Standing and No “Colorable” Claims*

Highland, the Claimant Trust, and Seery (together, the “Highland Parties”) filed a joint opposition (“Joint Opposition”) to HMIT’s Motion for Leave on May 11, 2023.<sup>127</sup> The Claims Purchasers filed a separate objection (“Claims Purchasers’ Objection”) to the Motion for Leave on May 11, 2023, as well.<sup>128</sup> In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are “colorable” claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).<sup>129</sup>

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers (“Claims Sellers”), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred **allowed** claims, HMIT would still be in the same position it is today: the holder of a

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<sup>127</sup> Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.’s Joint Opposition to Hunter Mountain Investment Trust’s Motion for Leave to File Verified Adversary Proceeding* (“Morris Declaration”) that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

<sup>128</sup> Bankr. Dkt. No. 3780.

<sup>129</sup> See Joint Opposition ¶ 139 (“Because HMIT lacks standing, this Court need not reach the merits of HMIT’s proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.”).

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not “colorable.”

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are “colorable” (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the “plausibility” standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

*H. HMIT’s Reply to the Proposed Defendants’ Opposition to the Motion for Leave*

In its reply brief (“Reply”), filed by HMIT on May 18, 2023,<sup>130</sup> it argues that it has constitutional standing as an “aggrieved party” to bring the Proposed Claims on behalf of itself.<sup>131</sup> HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.<sup>132</sup> Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the “colorability” of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the “four corners” of the Proposed Complaint

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<sup>130</sup> Bankr. Dkt. No. 3785.

<sup>131</sup> See Reply ¶ 7.

<sup>132</sup> See, Reply ¶ 23 n.5, where HMIT argues “The nature of this injury, in addition to Seery’s influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so.”

and “not weigh extraneous evidence,”<sup>133</sup> take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents “colorable” claims.

*I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes*

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days’ notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding *what kind of hearing* the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.<sup>134</sup> The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

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<sup>133</sup> See Reply ¶ 47.

<sup>134</sup> Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland’s proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a “colorable” claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that “the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint.”<sup>135</sup> Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court’s *Barton Doctrine*<sup>136</sup> pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.<sup>137</sup> On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that “the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave” and “[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose.”

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

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<sup>135</sup> Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 (“April 24 Transcript”), 14:6-11.

<sup>136</sup> The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

<sup>137</sup> See April 24 Transcript, 36:24-37:4 (“[W]e’re exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we’re doing is replicating a 12(b)(6) hearing on a motion for leave, we’re actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation.”); 37:5-13 (“The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to ‘screen and prevent bad-faith litigation.’ Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn’t do anything at all to screen. There’s no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.”).

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT’s request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court “Rule 202” proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents (“Motion to Exclude”), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT’s witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties’ witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

### III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court’s prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have *standing* to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are “*colorable*.” But prior to getting into the weeds on *standing* and “*colorability*,” some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT’s Proposed Claims are based, in large part, on allegations of *improper* claims trading.

#### A. *Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?*

As noted, at the crux of HMIT’s desired lawsuit is what this court will refer to as “claims trading activity” that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery’s compensation received since the beginning of his “collusion” with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: *When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?* Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered *allowing* the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing *material non-public information* to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.<sup>138</sup> In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

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<sup>138</sup> E.g., Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as “claims trading”) is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code’s enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter “*Bankruptcy Markets*”).<sup>139</sup>

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that “distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments.”<sup>140</sup> Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

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<sup>139</sup> See also Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11*, 12 CARDOZO L. REV. 1, 25 (1990) (noting that “the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790” when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

<sup>140</sup> Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). See also Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.<sup>141</sup> On the flipside, “[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process.”<sup>142</sup>

So, what are the “rules of the road” here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that “[i]f a claim other than one based on a publicly traded note, bond, or debenture” is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the *transferor* of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

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<sup>141</sup>See *Bankruptcy Markets*, at 70. See also *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (“Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.”).

<sup>142</sup> *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that “vulture investors add value by disciplining managers of distressed firms”).

by the alleged transferor). Third, the *economic consideration paid need not be disclosed to the court or anyone*. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the “lead bank”) will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.<sup>143</sup> To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.<sup>144</sup>

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and *is mostly a matter of private contract between buyer and seller*. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

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<sup>143</sup> Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

<sup>144</sup> Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).<sup>145</sup> Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.<sup>146</sup> Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.<sup>147</sup>

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a \$900,000 bank claim for \$16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

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<sup>145</sup> *In re Applegate Prop. Ltd.*, 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.*, 118 B.R. 282, 289-90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.*, 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

<sup>146</sup> *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

<sup>147</sup> *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.)*, 340 B.R. 180 (Bankr. S.D.N.Y. 2006), vacated, *Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.)*, 379 B.R. 425 (S.D.N.Y. 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.)*, 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson)*, 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased \$525,000 of unsecured claims for \$67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.*, 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the **transferor**; where there is no objection by the **transferor**, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.)*, 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter)*, 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.*, 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor’s involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.<sup>148</sup> But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there *seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter*. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a “mom-and-pop” type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth \$10’s of millions of dollars to \$100’s of millions of dollars in face value. And, of course, the sellers/transfersors of the claims have never shown up, subsequent to the claims trading

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<sup>148</sup> Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of “inequitable conduct” might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.*, 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that “equitable considerations can justify only the subordination of claims, not their disallowance” and also noting that “three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:]: (i) The claimant must have engaged in some type of inequitable conduct[:]; (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[:]; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act.” In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.*, 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may *recharacterize* a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)’s language that a claim should be allowed unless it is “unenforceable against the debtor and property of the debtor, under any agreement or applicable law....” is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it’s a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it’s a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here *had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case*. Thus, the amounts that would be paid on them were “locked in,” so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any “claw-back” litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.<sup>149</sup> ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

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<sup>149</sup> See discussion in BANKRUPTCY MARKETS, at 91:

Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

- I. Breach of Fiduciary Duties (Seery)
- II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)
- III. Conspiracy (all Proposed Defendants)
- IV. Equitable Disallowance (Claims Purchasers)
- V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)
- VI. Declaratory Judgment (all Proposed Defendants)

*The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.*

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

**Hypothetical #1:** The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. *As noted, there was no objection to the Rule 3001(e) notices here.*

**Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. *As noted, there is no dispute between purchasers and sellers here.*

**Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan “at any time before 180 days after the date of entry of the order for confirmation” and the court “may revoke such order if and only if such order was procured by fraud.” *As noted, here HMIT has suggested that the “pessimistic” plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.*

**Hypothetical #4:** As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser’s claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code (“the court may designate any entity whose acceptance or rejection of such plan was not in good faith”). *Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.*

**Hypothetical #5:** As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate *claims* to *other claims*. *See* Section 510(c) of the Bankruptcy Code. But here, HMIT is seeking either: (a) equitable subordination of the *claims* of the Claims Purchaser to HMIT’s *Class 10 former equity interest* (in contravention of the explicit terms of section 510(c)) or, (b) *equitable disallowance* of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

**Hypothetical #6:** Bankruptcy Code section 502(b)(1) and the Fifth Circuit’s *Lothian Oil* case may permit “recharacterization” of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case.”). The problem here is that Bankruptcy Rule 9024 provides that a motion for “reconsideration of an order allowing or disallowing a claim against the estate *entered without a contest* is not subject to the one year limitation prescribed in Rule 60(c)” (emphasis added). Here there was most definitely “a contest” with regard to all of these purchased claims. *Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.*

**Hypothetical #7:** If a party believes “insider trading” occurred there are governmental agencies that investigate and police that. *Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC’s purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing.*

**Hypothetical #8:** The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of “insider information” (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the “open kimono” metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.*, Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly *unregulated* activity in the bankruptcy world.

***HMIT is attempting to pursue causes of action here that, to this court’s knowledge, have never been allowed in a context like this.***

*B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?*

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT’s lack of *constitutional* standing but also argue that HMIT does not have *prudential* standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.<sup>150</sup>

The Highland Parties’ standing arguments focus almost entirely on HMIT’s lack of *prudential* standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants “play fast and loose with standing arguments” and that HMIT has *constitutional* standing as a “party aggrieved”<sup>151</sup> to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

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<sup>150</sup> *See* Proposed Complaint, ¶ 26.

<sup>151</sup> Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: *constitutional Article III standing*, which implicates federal court subject matter jurisdiction,<sup>152</sup> and the narrower standing concept of *prudential standing*, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.<sup>153</sup> “If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve.”<sup>154</sup> These elements ensure that a plaintiff has “such a personal stake in the outcome of the controversy” as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on his behalf.”<sup>155</sup>

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<sup>152</sup> Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

<sup>153</sup> See *Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court’s seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that “the irreducible constitutional minimum of standing contains [the] three elements”); see also *Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4<sup>th</sup> 298, 302 (5<sup>th</sup> Cir. 2022) (citing *id.*).

<sup>154</sup> *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

<sup>155</sup> *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,<sup>156</sup> the Fifth Circuit set forth a detailed analysis of the two types of “standing,” noting that the term “standing” is often “misused” in our legal system, which has led to confusion for both attorneys and judges.<sup>157</sup> The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that *in addition to* Article III constitutional standing, “courts have occasionally articulated other ‘standing’ requirements that plaintiffs must satisfy under certain conditions, *beyond those imposed by Article III*,”<sup>158</sup> such as the “standing” requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

*Abraugh* involved the civil rights statutes that provide, among other things, that “a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]” and noted that these statutes impose additional “standing” requirements that are a matter of prudential standing, not constitutional standing.<sup>159</sup> In *Abraugh*, the Fifth Circuit reversed and remanded a district court’s dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a “lack of subject matter jurisdiction” because the plaintiff in that action lacked standing.<sup>160</sup> The plaintiff was the mother of a prisoner

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<sup>156</sup> 26 F.4th 298.

<sup>157</sup> *Id.* at 303.

<sup>158</sup> *Id.* at 302 (emphasis added).

<sup>159</sup> *Id.* at 302-303.

<sup>160</sup> *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana’s wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana’s wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of *prudential* standing, and the plaintiff/mother actually *did* have *Article III* constitutional standing (“a constitutionally cognizable interest in the life of her son”).<sup>161</sup> Thus, the district court’s error was *not* in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked *subject matter jurisdiction* to consider any of the plaintiff’s/mother’s amended complaints.<sup>162</sup> The Fifth Circuit noted specifically that<sup>163</sup>

prudential standing does not present a jurisdictional question, but “a merits question: who, according to the governing substantive law, is entitled to enforce the right?” As the Federal Rules of Civil Procedure make clear, “an action must be prosecuted in the name of the real party in interest.” FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of “prudential” standing. “Not one of our precedents holds that the inquiry is jurisdictional.” It goes only to the validity of the cause of action. And “the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction.”

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the *appellate standing* of the appellants, have taken pains to distinguish between the concepts of:

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 301, 303-304. The Fifth Circuit opined that “the district court did not err in describing [the mother’s] inability to sue under Louisiana law as a defect of ‘standing[, b]ut it is a defect of prudential standing, not Article III standing” thus technically not implicating the federal court’s subject matter jurisdiction. *Id.* at 303.

<sup>163</sup> *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the “person aggrieved” test, which is applied in the Fifth Circuit in determining whether a party has *standing to appeal a bankruptcy court order*—which it describes as a narrower and “more exacting” standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the “person aggrieved” standard that is typically applied to ascertain bankruptcy *appellate* standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.<sup>164</sup> Because it is narrower and “more exacting” than the test for Article III constitutional standing, it involves application of prudential standing considerations.<sup>165</sup> The Fifth Circuit describes the “person aggrieved” test for bankruptcy appellant standing as requiring that an appellant show that it was “*directly and adversely affected pecuniarily* by the order of the bankruptcy court,” requiring “a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions.”<sup>166</sup> In affirming the district court’s dismissal of NexPoint’s appeal of the bankruptcy court’s fee orders, due to NexPoint’s lack of prudential standing under the “person aggrieved” test, the court rejected NexPoint’s argument that it had standing to appeal

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<sup>164</sup> *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, \*2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

<sup>165</sup> *Id.* at \*1, \*\*4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the “person aggrieved” test for standing in bankruptcy actions as a test for “prudential standing.”); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero’s standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that “[i]t is substantially more difficult to have standing to appeal a bankruptcy court’s order than it is to pursue a typical complaint under Article III of the U.S. Constitution” and that “the Fifth Circuit has long recognized that bankruptcy cases’ wide-reaching scope calls for a more stringent standing test.”).

<sup>166</sup> *See id.* at \*3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the “person aggrieved” prudential standing standard is applied in bankruptcy actions: “Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited.*” *Id.* (cleaned up).

because “it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the ‘person aggrieved’ standard” did not survive the Supreme Court’s 2014 *Lexmark*<sup>167</sup> opinion,<sup>168</sup> which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not “limit a cause of action that Congress has created merely because ‘prudence’ dictates.”<sup>169</sup> The Fifth Circuit held that the Supreme Court’s reminder in *Lexmark* did not nullify the “person aggrieved” test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*<sup>170</sup> (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, “rather than broadly modifying—or undermining—all prudential standing concerns, such as the one animating the ‘person aggrieved’ standard in bankruptcy appeals.”<sup>171</sup>

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties’ confusion about the standing issue, as exemplified in the parties’ reference to constitutional standing when they were actually arguing that they had prudential standing under the “person aggrieved” test: “Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

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<sup>167</sup> *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

<sup>168</sup> *Id.* at \*2.

<sup>169</sup> *See id.* at \*4 (cleaned up).

<sup>170</sup> 778 F.3d 502 (5th Cir. 2015).

<sup>171</sup> *NexPoint*, 2023 WL 4621466 at \*4 (cleaned up). The Fifth Circuit explicitly stated that “*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here.” *Id.* at \*5 (cleaned up).

standing requirement embodied in the ‘person aggrieved’ test.”<sup>172</sup> The district court noted that it had an “independent obligation to consider constitutional standing before reaching its prudential aspects.”<sup>173</sup> The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.<sup>174</sup> Interestingly, the court noted that, while the parties did not contest the district court’s determination that NexPoint had standing to pursue the appeal, it “may consider prudential standing issues *sua sponte*.”<sup>175</sup> In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential “person aggrieved” test applied to bankruptcy appeals, which “is, of necessity, quite limited” and “an even more exacting standard than traditional constitutional standing,” as it requires an appellant to show that it is “directly, adversely, and financially impacted by a bankruptcy order.”<sup>176</sup>

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must **first** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then **additionally** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might **limit** who may sue. Notwithstanding HMIT’s argument that it has standing under the “person

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<sup>172</sup> *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, \*1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the “person aggrieved” test and affirmed the bankruptcy court’s order after finding the third appellant, NexPoint, to have prudential standing under the “person aggrieved” test. *Id.* at \*\*1-3 and \*4.

<sup>173</sup> *Id.* at \*1 n.2.

<sup>174</sup> *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

<sup>175</sup> *Id.* at 501 (cleaned up).

<sup>176</sup> *Id.*

aggrieved” test<sup>177</sup>—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy *appellate* matters.<sup>178</sup> As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the “person aggrieved” test is a test for bankruptcy *appellate* standing, which is narrower than a party in interest’s right to be heard in bankruptcy cases in general.<sup>179</sup> The court rejected an argument that Bankruptcy Code § 1109, which provides that “[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter” confers *appellate* standing, noting that “one’s standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision” and that the “person aggrieved” test for bankruptcy appellate standing is narrower than the test for determining one’s standing to appear and be heard in a bankruptcy proceeding.<sup>180</sup>

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

## 2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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<sup>177</sup> HMIT insists that it has constitutional standing to bring claims on its individual behalf “as an aggrieved party.” See Reply, ¶ 7.

<sup>178</sup> HMIT’s argument in this matter that it has constitutional standing because it is a “party aggrieved” incorrectly conflates the prudential bankruptcy appellate “person aggrieved” test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term “standing” when they equate a lack of “standing,” in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

<sup>179</sup> See *NexPoint*, 2023 WL 4621466 at \*6.

<sup>180</sup> *Id.* at \*6 (cleaned up)(“Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the ‘person aggrieved’ standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer *appellate* standing.”)(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.<sup>181</sup>

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”<sup>182</sup> The Supreme Court in the *Spokeo* case expounded on the “concrete and particularized” requirements of the “injury in fact” element. Particularization requires a showing that the injury “must affect the plaintiff in a personal and individual way,” but while particularization is necessary, it alone is “not sufficient,” because an injury in fact must also be “concrete.”<sup>183</sup> And, concreteness is “quite different from particularization.”<sup>184</sup> A “concrete” injury must be “real,” and “not abstract,” though it does not mean that the injury must be “tangible,” as the injury can be intangible and nevertheless be concrete.<sup>185</sup> In addition to the concreteness and particularization requirements, an injury in fact must be “actual or imminent” such that “allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing.”<sup>186</sup> “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

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<sup>181</sup> See *supra* note 153.

<sup>182</sup> *Lujan*, 504 U.S. at 560 (cleaned up).

<sup>183</sup> *Spokeo*, 578 U.S. at 339.

<sup>184</sup> *Id.* at 340.

<sup>185</sup> *Id.*

<sup>186</sup> *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending”; “allegations of *possible* future injury are not sufficient.”<sup>187</sup>

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that “the injury has to be fairly traceable to the challenged action of the defendant.”<sup>188</sup> The “fairly traceable” test requires an examination of “the causal connection between the assertedly unlawful conduct and the alleged injury.”<sup>189</sup>

Redressability. The third element—redressability—requires the court to examine the connection “between the alleged injury and the judicial relief requested.”<sup>190</sup> “Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court.”<sup>191</sup> “[A] court must determine that there is an available remedy which will have a ‘substantial probability’ of redressing the plaintiff’s injury.”<sup>192</sup>

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers’ acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.<sup>193</sup>

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<sup>187</sup> *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)(“[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a ‘possible’ future injury similarly will not suffice.”)(cleaned up).

<sup>188</sup> *Lujan*, 504 U.S. at 560-61 (cleaned up).

<sup>189</sup> *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

<sup>190</sup> *Id.* (noting “it is important to keep the [‘fairly traceable’ and ‘redressability’] inquiries separate if the ‘redressability’ component is to focus on the requested relief.”).

<sup>191</sup> *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998).

<sup>192</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at \*5 (“Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff’s Article III standing.”).

<sup>193</sup> As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT’s lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers’ argument here. What is HMIT’s concrete and particularized injury—that is “real” and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its unvested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery’s alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.<sup>194</sup> Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery’s actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT’s allegations regarding Seery’s “excessive” compensation were based entirely on Dondero’s pure speculation. In reality, Seery’s base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed *in advance of* the Plan confirmation hearing and approved by this court as part of the Plan

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applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (“[S]ubject-matter jurisdiction, because it involves a court’s power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”)(cleaned up); *Abraugh*, 26 F.4th at 304 (“It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.”)(cleaned up).

<sup>194</sup> At the June 8 Hearing, HMIT’s counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT’s counsel acknowledged that claims trades, in and of themselves, would not “involve injury to the Reorganized Debtor and to the Claimant Trust” and that claims trades are “normally outside the purview of the bankruptcy court” but that “[h]ere, we have alleged . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.” June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery’s excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery’s post-Effective Date compensation would include a “Base Salary” (again, same as during the bankruptcy case), a “success fee,” and “severance.”<sup>195</sup> The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT’s Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy’s claims to have standing based on the *speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan*. For example, the Fifth Circuit affirmed the district court’s dismissal of an appeal by Dugaboy of the bankruptcy court’s order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

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<sup>195</sup> The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that “The salient terms of each Trustee’s employment, including such Trustee’s duties and compensation shall be set forth in the Claimant Trust Agreement . . . .” The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the “Base Salary”). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

“person aggrieved” test to appeal the bankruptcy court’s order, Dugaboy lacked constitutional standing “because they have not identified any injury fairly traceable to the Order: *the injuries identified are speculative at best and nonexistent at worst.*”<sup>196</sup> HMIT’s allegations of injury are, without a doubt, “merely conjectural or hypothetical” and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests.<sup>197</sup> The court finds that HMIT would not meet the “concrete and particularized” or the “actual or imminent” requirements for an “injury in fact,” and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show “traceability” with respect to the Claims Purchasers and/or Seery (i.e., a “causal connection between the assertedly unlawful conduct and the alleged injury”<sup>198</sup>), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show “redressability” (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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<sup>196</sup> *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, \*1 n.2 (N.D. Tex. Jan. 28, 2022), *aff’d* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer’s opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, \*3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff’d per curiam*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that “*its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor’s former equity holders*” and that “it ha[d] standing as a ‘contingent beneficiary’ under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full,” and Judge Scholer stated, “This assertion is premised on the assumption that Dugaboy’s 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a ‘speculative prospect of harm is far from a direct, adverse, pecuniary hit’ as required to confer standing.”

<sup>197</sup> *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

<sup>198</sup> *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.<sup>199</sup> The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of *equitable subordination* of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), *claims cannot be subordinated to interests*. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,<sup>200</sup> that *equitable disallowance* of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit’s *Lothian Oil* case might permit “recharacterization” of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case.”). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for “reconsideration of an order allowing or disallowing a claim against the estate *entered without a contest* is not subject to the one year limitation prescribed in Rule 60(c)” (emphasis added). As further noted earlier, here there was most definitely a “contest” with regard to all of these purchased claims. ***Thus, it would appear***

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<sup>199</sup> See *supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT’s alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT’s distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the “redressability” requirement with respect to the Claims Purchasers.

<sup>200</sup> *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5<sup>th</sup> Cir. 1977).

*that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.*

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to “federal bankruptcy law,” HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which “applies to this proceeding pursuant to” Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. (“LWE”)*,<sup>201</sup> the Fifth Circuit’s leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing *where the plaintiff otherwise lacks standing under applicable state law*. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 “speaks only to the adequacy of the . . . pleadings,” and “cannot be understood to ‘abridge, enlarge, or modify any substantive right,’”<sup>202</sup> including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT’s reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances *during* a bankruptcy case, to “file

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<sup>201</sup> 858 F.2d 233 (5th Cir. 1988).

<sup>202</sup> *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee”<sup>203</sup> and does not apply to a party’s right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate’s assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist,<sup>204</sup> Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this *post*-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors’ committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine “as a threshold issue” whether the creditors’ committee in that case could assert its claims under Louisiana law.<sup>205</sup> The court specifically addressed whether the creditors’ committee could pursue a derivative action under Louisiana law and concluded that “there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions.”<sup>206</sup> So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.<sup>207</sup> Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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<sup>203</sup> *LWE*, 858 F.2d at 247.

<sup>204</sup> See *In re Craig’s Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

<sup>205</sup> *LWE*, 858 F.2d at 236-45.

<sup>206</sup> *Id.* at 243.

<sup>207</sup> See *In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors’ committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, “To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the “Internal Affairs Doctrine.”<sup>208</sup> In addition, because HMIT’s breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.<sup>209</sup> For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,<sup>210</sup> and “to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement” such that “the plaintiff must be a beneficial owner” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.”<sup>211</sup> This requirement is “mandatory and exclusive” and only “a beneficial owner” “has standing to bring a derivative claim on behalf of the

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may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors’ state of incorporation or formation.”).

<sup>208</sup> Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

<sup>209</sup> *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

<sup>210</sup> *See* Proposed Complaint, ¶ 26.

<sup>211</sup> *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at \*19 n.123 (Del. Ch. June 15, 2011), *aff’d* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust.”<sup>212</sup> The Highland Parties argue that HMIT is not a “beneficial owner” of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it *is* currently, and was at all relevant times, a “beneficial owner” of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT’s interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a “beneficial owner” of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT’s former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a “Contingent Claimant Trust Interest,” as defined under the Plan.<sup>213</sup> HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present “beneficial owner” under Delaware trust law.

The Highland Parties argue that HMIT is not a “beneficial owner” of the Claimant Trust; rather, the “beneficial owners” of the Claimant Trust are the “Claimant Trust Beneficiaries,”<sup>214</sup> which are defined in the Plan and the CTA as “the Holders of Allowed General Unsecured Claims” (which are in Class 8 under the Plan) and “Holders of Allowed Subordinated Claims” (which are in Class 9 under the Plan);<sup>215</sup> HMIT, a holder of a Class 10 interest under the Plan, is neither.

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<sup>212</sup>*In re Nat’l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: “Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction.” Reply, ¶ 19 (citing 12 Del C. § 3816).

<sup>213</sup> See Plan Art. III.H.10 and Art. I.B.44.

<sup>214</sup> Section 2.8 of the CTA provides, “The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . .” HMIT Ex. 26, § 2.8.

<sup>215</sup> See Plan Art. I.B.44 (“‘Claimant Trust Beneficiaries’ means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a “Contingent Claimant Trust Interest,” has only an *unvested* contingent interest in the Claimant Trust and, as such, is not a “beneficial owner” of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it “should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants’] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein.”<sup>216</sup> The court disagrees.

HMIT’s status as a “beneficiary” of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that “Contingent Trust Interests” “shall not have any rights under this Agreement” and will not “be deemed ‘Beneficiaries’ under this Agreement,” “unless and until” they vest in accordance with the Plan and the CTA. It is undisputed that HMIT’s Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested based on HMIT’s unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a “beneficial owner” of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.<sup>217</sup>

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Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.”); CTA § 1.1(h). *See also*, CTA, 1 at n.2 (“For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.”). HMIT Ex. 26.

<sup>216</sup> Proposed Complaint ¶ 24.

<sup>217</sup> *See Nat’l Coll.*, 251 A.3d at 190–92 (dismissing creditors’ derivative claims because they were not “beneficial owners of the Trusts”); *Hartsel*, 2011 WL 2421003, at \*19 n.123 (dismissing derivative claims by investors that “no longer own shares” because “those investors no longer have standing to pursue a derivative claim”).

- b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*<sup>218</sup> To bring “a derivative action” on behalf of a limited partnership, “the plaintiff must be a partner or an assignee of a partnership interest” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.”<sup>219</sup>

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT *was* a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.<sup>220</sup> Because HMIT would not hold a partnership interest in the Reorganized Debtor at “the time of bringing the action,” it “lacks derivative standing” to bring claims “on the partnership’s behalf.”<sup>221</sup> HMIT likewise cannot satisfy “the continuous ownership requirement”; when HMIT’s limited partnership interest in the original Debtor was cancelled on the Plan’s Effective Date, HMIT “los[t] standing to continue a derivative suit” on behalf of the Debtor.<sup>222</sup> Finally, to the extent HMIT

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<sup>218</sup> Proposed Complaint ¶ 25.

<sup>219</sup> 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) (“The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party’s fiduciary duties to them.”) (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff’d* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) (“The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.”) (citing 6 Del. C. § 17-211(h)).

<sup>220</sup> *See* Plan Art. IV.A.

<sup>221</sup> *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

<sup>222</sup> *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff’s partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a “double derivative” action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A “double derivative” action is a suit “brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled.”<sup>223</sup> And, under Delaware law, “parent level standing is required to enforce a subsidiary’s claim derivatively.”<sup>224</sup> Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,<sup>225</sup> it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As *Direct* Claims.

HMIT argues that it has “direct” standing to pursue the Proposed Claims on behalf of itself, individually.<sup>226</sup> But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: “a claim is not ‘direct’ simply because it is pleaded that way.”<sup>227</sup> Rather, in determining whether claims are direct or derivative, a court must “look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs’ characterization.”<sup>228</sup> And, under Delaware law, “whether a claim is solely derivative or

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*SkyPort Global Commcn’s, Inc.*), 2011 WL 111427, at \*25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders “lack standing to bring a derivative claim” under Delaware law because they “had their equity interests in the company extinguished pursuant to the merger under the Plan”); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) (“[T]he cancellation of WorldCom shares under the Plan ... prevents the required continuation of shareholder status through the litigation.”) (cleaned up).

<sup>223</sup> *Lambrecht v. O’Neal*, 3 A.3d 277, 282 (Del. 2010).

<sup>224</sup> *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

<sup>225</sup> *See supra* pp. 80-82.

<sup>226</sup> *See e.g.*, Motion for Leave ¶ 10 (“HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . .”); *id.* ¶ 67 (arguing that “HMIT has [d]irect [s]tanding”); Proposed Complaint ¶ 24 (“HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.”).

<sup>227</sup> *Schmermerhorn*, 2011 WL 111427, at \*26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at \*7 (Del. Ch. Nov. 5, 2004)).

<sup>228</sup> *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)(“The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party’s] characterization or stated intention.”)(cleaned up).

may continue as a dual-natured claim ‘must turn *solely* on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?’”<sup>229</sup> “In addition, to prove that a claim is direct, a plaintiff ‘must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.’”<sup>230</sup> Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: “[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate,” such that “only the bankruptcy trustee has standing to pursue the claim for the estate . . . .”<sup>231</sup> “To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate.”<sup>232</sup>

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, *since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims.*

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<sup>229</sup> *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

<sup>230</sup> *Id.* (quoting *Tooley*, 845 A.2d at 1033); see also *Schmermerhorn*, 2011 WL 111427, at \*24 (same).

<sup>231</sup> *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

<sup>232</sup> *Id.*; see also *Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994) (“If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.”)(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) “comes about only because of harm to the debtor,” so the alleged “injury is derivative.”<sup>233</sup> The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,<sup>234</sup> oversees the Claimant Trustee’s performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate “Litigation Trustee” in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

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<sup>233</sup> *Meridian*, 912 F.3d at 293–94 (“The creditors’ injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties.”); *see also El Paso*, 152 A.3d at 1260–61 & n.60 (holding that claim “claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative”) (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at \*12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had “not identified any independent harm suffered by the limited partners”; “the partnership suffered all the harm at issue—it paid too much”).

<sup>234</sup> *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

*C. Are the Proposed Claims “Colorable”?*

1. What is the Proper Standard of Review for a “Colorability” Determination?

Although the court has determined that HMIT would *not* have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be “colorable.” This, in turn, requires the court to assess what the legal standard is to determine if a claim is “colorable.” As a reminder, the Plan’s Gatekeeper Provision and this court’s prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are “colorable.” The Gatekeeper Provision and Gatekeeper Orders did not specifically define “colorable” or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple “plausibility” standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a *plausible* claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.<sup>235</sup> The Proposed Defendants, however, argue that the test for colorability should be more

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<sup>235</sup> Reply, ¶ 5 (“[T]he determination of ‘colorability’ does not allow the ‘weighing’ of evidence. At most, a Rule 12(b)(6) ‘plausibility’ standard applies.”).

akin to the test applied under the *Barton* doctrine,<sup>236</sup> under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is “not without foundation.” In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as “evidence” to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the “colorability” standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,<sup>237</sup> less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.<sup>238</sup> HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

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<sup>236</sup> *Barton v. Barbour*, 104 U.S. 126 (1881).

<sup>237</sup> Bankr. Dkt. Nos. 3815 and 3816.

<sup>238</sup> See June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).<sup>239</sup>

In determining what appropriate legal standard applies here in the “colorability” analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero’s post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.<sup>240</sup> This court observed that “prior to the commencement of the Debtor’s bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade” and that “[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor.”<sup>241</sup> This court further found that: (1) Dondero’s post-petition litigation “was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery’s credible testimony, that if Dondero’s plan proposal was not accepted, he would ‘burn down the place,’”<sup>242</sup> (2) without the Gatekeeper Provision in place, “Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date” and that “the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

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<sup>239</sup> See *Hunter Mountain Investment Trust’s Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* (“HMIT W&E List”)[Bankr. Dkt. No. 3818] and n.1 thereto; see also June 8 Hearing Transcript, 33:7-10.

<sup>240</sup> See Confirmation Order ¶¶ 76-79.

<sup>241</sup> *Id.* ¶ 77.

<sup>242</sup> *Id.* ¶ 78. See *supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,”<sup>243</sup> and, (3) “unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,<sup>244</sup> the absence of which will present unacceptable risks to parties currently willing to serve in such roles.” Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).<sup>245</sup>

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision “screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan’s effectiveness.”<sup>246</sup>

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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<sup>243</sup> *Id.*

<sup>244</sup> Asd noted at ¶ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor’s insurance broker (“AON”), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so *without an exclusion for claims asserted by Mr. Dondero and his affiliates* required that the Confirmation Order approve the Gatekeeper Provision.

<sup>245</sup> *Id.* ¶ 80.

<sup>246</sup> *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 435 (5th Cir. 2022).

how “colorability” should work here. It seems that applying HMIT’s proposed Rule 12(b)(6) “plausibility” standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the “colorability” of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor’s implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges<sup>247</sup>—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan’s Gatekeeper Provision, the Fifth Circuit stated, “Courts have long recognized bankruptcy courts can perform a gatekeeping function” and noted, by way of example, that “[u]nder the ‘*Barton* doctrine,’ the bankruptcy court may require a party to ‘obtain leave of

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<sup>247</sup> See *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has “a colorable claim to vested benefits” such that the employee may be considered a “participant” under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting “claimants [with] no colorable legal claim” to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant’s double jeopardy claim was “colorable” such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at \*3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a “colorable claim” against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at \*3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a “colorable claim” to warrant the district court’s exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at \*5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at \*5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a “colorable constitutional claim” such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor’s official capacity.”<sup>248</sup> As noted above, the Fifth Circuit found that the Gatekeeper Provision, which “requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court’s approval of the claim as ‘colorable’”—*i.e.*, to “screen and prevent bad-faith litigation,”—is “sound.”<sup>249</sup>

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the “colorability” standard under gatekeeping provisions in a plan<sup>250</sup>—as more informative on how to approach “colorability” than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.<sup>251</sup>

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, “[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation,” and emphasized that the “not without foundation” standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, “involves a greater degree of flexibility” than a Rule 12(b)(6) motion to dismiss because “the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit,” and “is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor’s estate.”<sup>252</sup> To satisfy the “*prima facie* case standard,” “the movant must do more than meet the liberal notice-pleading

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<sup>248</sup> *Id.* at 438 (cleaned up).

<sup>249</sup> *Id.* at 435.

<sup>250</sup> The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the “appointing” court of Seery.

<sup>251</sup> 678 F.3d 218 (3d Cir. 2012).

<sup>252</sup> *Id.* at 232-233 (cleaned up).

requirements of Rule 8.”<sup>253</sup> “[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless.”<sup>254</sup> This court agrees with the notion, that “[t]o apply a less stringent standard would eviscerate the protections” of the Gatekeeper Provision and Gatekeeper Orders.<sup>255</sup> The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that “[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,”<sup>256</sup> and that “the decision whether to grant leave may involve a ‘balancing of the interests of all parties involved,’” which will ordinarily require an evidentiary hearing.<sup>257</sup> The Third Circuit applied “the deferential abuse of discretion standard” in considering whether the bankruptcy court’s granting of leave should be affirmed on appeal.<sup>258</sup>

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<sup>253</sup> *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

<sup>254</sup> *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at \*2 (N.D. Ill. Nov. 30, 2000).

<sup>255</sup> *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at \*2).

<sup>256</sup> *VistaCare*, 678 F.3d at 232 n.12.

<sup>257</sup> *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court’s holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

<sup>258</sup> *Id.* at 224 (“We review a bankruptcy court’s decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.”) (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court’s decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. See *In re Bednar*, 2021 WL 1625399, at \*3 (B.A.P. 10th Cir. Apr. 27, 2021) (“[T]he Bankruptcy Court’s decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .”) (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App’x 969, 973–74 (11th Cir. 2016) (“Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court’s ruling on a *Barton* motion for an abuse of discretion.”) (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at \*3 (B.A.P. 1st Cir. Sept. 17, 2014) (“Appellate courts review a bankruptcy court’s decision to deny a motion for leave to sue under the abuse of discretion standard.”) (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court’s conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.<sup>259</sup>

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to “show that the claims sought to be asserted have sufficient merit,” including that “the proposed filing is both procedural and legally sound,” and “that the claims are not brought for any improper purpose, such as harassment.”<sup>260</sup> “For a pre-filing injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review,” such as the “plausibility” standard for a Rule 12(b)(6) motion.<sup>261</sup> Rather, courts apply “an additional layer of review,” and “may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action” or that the “litigant’s allegations are unlikely,” especially “when prior cases have shown the litigant to be untrustworthy or not credible . . . .”<sup>262</sup>

In summary, the court rejects HMIT’s positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are “plausible” under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT’s argument that this court is not permitted to consider evidence in making its “colorability” determination is completely contradictory to HMIT’s actions in filing the Motion

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<sup>259</sup> See *Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at \*4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after “a close examination” by the bankruptcy court of the evidence regarding the trustee’s actions and finding that “the plaintiffs’ allegations are not based in fact”), *aff’d* 799 F. App’x 271 (5th Cir. 2020).

<sup>260</sup> *Silver v. City of San Antonio*, 2020 WL 3803922, at \*1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); see also *Silver v. Perez*, 2020 WL 3790489, at \*1 (W.D. Tex. July 7, 2020) (same).

<sup>261</sup> *Silver*, 2020 WL 3803922, at \*6.

<sup>262</sup> *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of “objective evidence” that “supported” its motion.

The court concludes that the appropriate standard to be applied in making its “colorability” determination in *this* bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in *this* Plan, is a broader standard than the “plausibility” standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves *an additional level of review*—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are *not without foundation*, are *not without merit*, and are *not being pursued for any improper purpose such as harassment*. Additionally, this court may, and should, take into consideration its *knowledge* of the *bankruptcy proceedings* and *the parties* and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of “colorability” as the “Gatekeeper Colorability Test.” The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT’s Proposed Complaint Does Not Present “Colorable” Claims Under this Court’s Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) “Plausibility” Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not “colorable” claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT’s Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

“plausibility” standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT’s “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” fail to “[c]ross the line from conceivable to plausible.”<sup>263</sup>

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery’s breach of fiduciary duties and the Claims Purchasers’ conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are “colorable”—or even merely plausible.

a) HMIT’s Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT’s Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a “colorable” breach of fiduciary duties claim against Seery, under this court’s Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) “[b]y disclosing material non-public information to Stonehill and Farallon”

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<sup>263</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving “compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021.”<sup>264</sup>

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the “Internal Affairs Doctrine.”<sup>265</sup> Under Delaware law, “[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege ‘(1) that a fiduciary duty existed and (2) that the defendant breached that duty.’”<sup>266</sup> HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.<sup>267</sup> Because Seery did not owe any “duty” to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT’s “legal conclusion[.]” that Seery “owed fiduciary duties to HMIT, as equity, and to the Debtor’s Estate”<sup>268</sup> “do[es] not suffice” to plausibly allege the existence of any actionable fiduciary relationship.<sup>269</sup> And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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<sup>264</sup> Proposed Complaint ¶¶ 64–67.

<sup>265</sup> Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

<sup>266</sup> *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at \*30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at \*8 (Del. Ch. Feb. 28, 2020)).

<sup>267</sup> *See Gilbert v El Paso Co.*, 1988 WL 124325, at \*9 (Del. Ch. Nov. 21, 1988) (“[D]irectors’ fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.”) *aff’d*, 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at \*11 (Del. Ch. Nov. 7, 2013) (same).

<sup>268</sup> Proposed Complaint ¶ 63.

<sup>269</sup> *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery’s alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery “disclose[d] material non-public information to Stonehill and Farallon,” and they “acted on inside information and Seery’s secret assurances of great profits.”<sup>270</sup> But the Proposed Complaint does not make any factual allegations regarding HMIT’s “conclusory allegations,” and its “legal conclusions” are “purely speculative, devoid of factual support,” and therefore “stop[] short of the line between possibility and plausibility of entitlement to relief”<sup>271</sup> (and certainly stop short of being “colorable”). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what “assurances of great profits” he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he *believed* that Seery *must have* communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon’s purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that “made [any] sense.” Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery’s post-Effective Date compensation had or had not been negotiated in an arms’ length transaction. Dondero only

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<sup>270</sup> Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

<sup>271</sup> *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it “made no sense” to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland’s court-approved Disclosure Statement.<sup>272</sup> The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phone calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over \$33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of \$113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT’s Proposed Complaint was the MGM Email Dondero sent to Seery containing “information regarding Amazon and Apple’s interest in acquiring MGM.” But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.<sup>273</sup> Moreover, the evidence showed that Dondero *did not* communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM—which was that Amazon had met MGM’s “strike price” and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

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<sup>272</sup> Proposed Complaint ¶¶ 3, 37, 42.

<sup>273</sup> See, e.g., *SEC v. Cuban*, 2013 WL 791405, at \*10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not “material, nonpublic information” and “becomes public when disclosed to achieve a broad dissemination to the investing public”) (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"<sup>274</sup> the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.<sup>275</sup>

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint<sup>276</sup> and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.<sup>277</sup> Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.<sup>278</sup> HMIT's conspiracy cause of action against the Claims

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<sup>274</sup> Proposed Complaint ¶¶ 4, 13, 54, 74.

<sup>275</sup> See *Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]lthough the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

<sup>276</sup> Proposed Complaint ¶¶ 69-74.

<sup>277</sup> Proposed Complaint ¶¶ 75-81.

<sup>278</sup> See *Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of “internal affairs” or of corporate governance, so it is governed by Texas law under the Plan.<sup>279</sup>

As an initial matter, because HMIT does not present either a “colorable”—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a “colorable” or plausible claim for secondary liability for the same alleged wrongdoing.<sup>280</sup> In addition, HMIT’s civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero’s speculation and unsupported inferences and, thus, HMIT has not “colorably” alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, “civil conspiracy is a theory of vicarious liability and not an independent tort.”<sup>281</sup> “[T]he elements of civil conspiracy [are] “(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result.”<sup>282</sup> While HMIT alleges that “Defendants conspired with each other to unlawfully breach fiduciary duties,”<sup>283</sup> it is simply a “legal conclusion” and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.<sup>284</sup>

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<sup>279</sup> *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to “the rights and obligations arising under this Plan” except for “corporate governance matters.”)

<sup>280</sup> *See English v. Narang*, 2019 WL 1300855, at \*14 (Del. Ch. Mar. 20, 2019) (“As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.”) (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at \*10 (Tex. App. Jan. 25, 2022) (“[A] defendant’s liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.”) (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT’s breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, “conspiracy is not an internal affair” or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

<sup>281</sup> *Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

<sup>282</sup> *Id.* at 141 (cleaned up).

<sup>283</sup> Proposed Complaint ¶ 76.

<sup>284</sup> *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a “as a *quid pro quo*” for “additional compensation,”<sup>285</sup> each time based upon conclusory allegations based “upon information and belief” and, frankly, pure speculation from Dondero that his imagined “scheme,” “covert *quid pro quo*,” and secret “conspiracy” between Seery, on the one hand, and Farallon and Stonehill, on the other,<sup>286</sup> **must have** occurred because “[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk” (i.e., “[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery’s assurance of great profits.”)<sup>287</sup> Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.<sup>288</sup> HMIT’s allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero’s speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.<sup>289</sup> Thus, HMIT cannot meet

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<sup>285</sup> Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

<sup>286</sup> *See id.* ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”).

<sup>287</sup> *Id.*

<sup>288</sup> *See, e.g., id.* ¶ 3 (alleging that acquiring the claims “did not offer a **sufficient** potential profit to justify the publicly disclosed risk”)(emphasis added); ¶ 43 (“Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . .”); ¶ 49 (“Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any significant* profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.”) (third emphasis added).

<sup>289</sup> In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data **he** (or entities he controls or controlled) would rely on, what **his** risk tolerance would have been, and what level of potential profits **he** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint’s statement that it would have been “*impossible* for Stonehill and Farallon (in the absence of insider information) to forecast *any* significant profit at the time of their multi-million-dollar investments,” the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, “at the time of their multi-million-dollar investments” was publicly available information.<sup>290</sup> HMIT’s suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT’s allegation that “[u]pon information and belief” Farallon “conducted no due diligence but relied on Seery’s profit guarantees” plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero’s speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT’s allegations in the Proposed Complaint that *Farallon* “conducted no due diligence,” are based on Dondero’s speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

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<sup>290</sup> The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months *after* the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.<sup>291</sup> In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.<sup>292</sup> The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

- c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint
  - i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."<sup>293</sup> As noted above, these remedies are not available to HMIT.<sup>294</sup>

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

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<sup>291</sup> See June 8 Hearing Transcript, 239:6-21.

<sup>292</sup> See *id.*, 310:19-312:2.

<sup>293</sup> Proposed Complaint ¶¶ 83-87.

<sup>294</sup> See *infra* pages 74-75.

subordination of a *claim to other claims* or an *interest to other interests* but does not permit equitable subordination of a *claim to interests*.

Second, “equitable” disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.<sup>295</sup>

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following a *contest* (which is certainly the case with respect to the Purchased Claims) based on the “equities of the case.” But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT’s request for disallowance of Muck and Jessup’s Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, “by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity” and that “[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;” thus, HMIT alleges, the Claims Purchasers “should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment” and “a constructive trust should be imposed on such proceeds . . . .”<sup>296</sup>

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<sup>295</sup> *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

<sup>296</sup> Proposed Complaint ¶¶ 89-93.

HMIT alleges further that “Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restate all compensation he has received from the outset of his collusive activities” and “[a]lternatively he should be required to disgorge and restate all compensation received since the Effective Date” over which a constructive trust should be imposed.<sup>297</sup> HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,<sup>298</sup> “[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay.”<sup>299</sup> Thus, “when a valid, express contract covers the subject matter of the parties’ dispute, there can be no recovery under a quasi-contract theory.”<sup>300</sup> Here, as noted above, HMIT’s only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery’s allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery’s compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT’s claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero’s conspiracy theory is correct and that HMIT’s would succeed on the merits with respect

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<sup>297</sup> *Id.* ¶ 94.

<sup>298</sup> Under the Plan, Texas law governs HMIT’s “claim” for unjust enrichment because it is not a “corporate governance matter.” (Plan Art. XII.M.) It also governs HMIT’s “claim” for constructive trust, which “is merely a remedy used to grant relief on the underlying cause of action.” *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

<sup>299</sup> *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

<sup>300</sup> *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.<sup>301</sup> But, a request for declaratory relief is not “an independent cause of action”<sup>302</sup> and “in the absence of any underlying viable claims such relief is unavailable.”<sup>303</sup> This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero’s vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers’ and Seery’s “misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others,” thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery’s alleged breach of his fiduciary duties. And under Delaware law, the “court cannot award punitive damages in [a] fiduciary duty action.”<sup>304</sup>

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<sup>301</sup> Proposed Complaint ¶¶ 96-99.

<sup>302</sup> See *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

<sup>303</sup> *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at \*2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); see also *Hopkins v. Cornerstone Am.*

<sup>304</sup> *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff’d* 682 F. App’x 24 (2d Cir. 2017).

3. HMIT Does Not Present “Colorable” Claims Under this Court’s Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court’s Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court’s knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT’s Motion for Leave should be denied.

#### **IV. CONCLUSION**

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT’s Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are “colorable” claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court's Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) "plausibility" standard, the Proposed Claims are not plausible.

Accordingly,

**IT IS ORDERED** that HMIT's Motion for Leave be, and hereby is **DENIED**.

**###End of Memorandum Opinion and Order###**

# Exhibit 2



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 25, 2023

*Henry G. C. Gannge*  
United States Bankruptcy Judge

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

IN RE:

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Reorganized Debtor.

§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj-11

**MEMORANDUM OPINION AND ORDER PURSUANT TO PLAN “GATEKEEPER  
PROVISION” AND PRE-CONFIRMATION “GATEKEEPER ORDERS”: DENYING  
HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY MOTION FOR  
LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING<sup>1</sup>  
[BANKR. DKT. NOS. 3699, 3760, 3815, and 3816]**

**I. INTRODUCTION**

BEFORE THIS COURT is yet another post-confirmation dispute relating to the Chapter 11 bankruptcy case of Highland Capital Management, L.P. (“Highland” or “Reorganized Debtor”).

<sup>1</sup> On August 2, 2023, this court signed an Order [Bankr. Dkt. No. 3897] that was agreed to among various parties, after the filing of a Motion to Stay and Compel Mediation [Bankr. Dkt. No. 3752] filed by James D. Dondero and related entities. Pursuant to paragraph 7 of that order, certain pending matters in the bankruptcy court are stayed pending mediation. The parties did not agree to stay the matter addressed in this Memorandum Opinion and Order.

It is now more than two and half years since the confirmation of Highland’s Plan<sup>2</sup>—the Plan having been confirmed on February 22, 2021.<sup>3</sup> The Plan was never stayed; it went effective on August 11, 2021 (“Effective Date”), and it was affirmed almost in its entirety by the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”), in late summer 2022, including an approval of the so-called Gatekeeper Provision<sup>4</sup> therein. The Gatekeeper Provision—and how and whether it should now be exercised or interpreted to allow a certain lawsuit to be filed—is at the heart of the current *Emergency Motion for Leave to File Verified Adversary Proceeding* [Bankr. Dkt. Nos. 3699, 3760, 3815, 3816] (collectively, the “Motion for Leave”) filed by a movant known as Hunter Mountain Investment Trust (“HMIT”).

A. *Who is the Movant, HMIT?*

Who is HMIT? It is undisputed that it is a former equity owner of Highland. It held 99.5% of Highland’s Class B/C limited partnership interests and was classified in a Class 10 under the confirmed Plan, which class treatment provided it with a contingent interest in the Highland Claimant Trust (“Claimant Trust”) created under the Plan, and as defined in the Claimant Trust Agreement. This means that HMIT could receive consideration under the Plan if all claims against Highland are ultimately paid in full, with interest. As later further discussed, it is undisputed that

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<sup>2</sup> Capitalized terms not defined in this introduction shall have the meaning ascribed to them below.

<sup>3</sup> The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Confirmation Order”)[Bankr. Dkt. No. 1943].

<sup>4</sup> In an initial opinion dated August 19, 2022, the Fifth Circuit affirmed the Confirmation Order in large part, “revers[ing] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan’s exculpation, and affirm[ing] on all remaining grounds.” *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at \*1 (5th Cir. Aug. 19, 2022). On September 7, 2022, following a petition for limited panel rehearing filed by certain appellants on September 2, 2022, “for the limited purpose of clarifying and confirming one part of its August 19, 2022 opinion,” the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 424 (5th Cir. 2022). The substituted opinion differed from the original opinion only by the replacement of one sentence from section “IV(E)(2) – *Injunction and Gatekeeper Provisions*” of the original opinion: “The injunction and gatekeeper provisions are, on the other hand, perfectly lawful.” was replaced with “We now turn to the Plan’s injunction and gatekeeper provisions.” In all other respects, the Fifth Circuit panel’s original ruling remained unchanged. Petitions for writs of certiorari regarding the Confirmation Order have been pending at the United States Supreme Court since January 2023.

HMIT's only asset is its contingent interest in the Claimant Trust. It has no employees or revenue. HMIT's representative has testified that HMIT is liable on more than \$62 million of indebtedness owed to The Dugaboy Investment Trust ("Dugaboy"), a family trust of which James Dondero ("Dondero"), the co-founder and former chief executive officer ("CEO") of Highland, and his family members are beneficiaries, and that Dugaboy also is paying HMIT's legal fees. HMIT vehemently disputes the suggestion that it is controlled by Dondero.

*B. What Does the Movant HMIT Seek Leave to File?*

HMIT seeks leave to file an adversary proceeding ("Proposed Complaint")<sup>5</sup> in the bankruptcy court to bring claims on behalf of itself and, derivatively, on behalf of the Reorganized Debtor and the Claimant Trust for alleged breach of fiduciary duties by the Reorganized Debtor's CEO and Claimant Trustee, James P. Seery, Jr. ("Seery") and conspiracy against: (1) Seery; and (2) purchasers of \$365 million face amount of *allowed* unsecured claims in this case, who purchased their claims post-confirmation but prior to the occurrence of the Effective Date of the Plan ("Claims Purchasers,"<sup>6</sup> and with Seery, the "Proposed Defendants"). To be clear (and as later further explained), the claims acquired by the Claims Purchasers were acquired by them after extensive litigation, mediation, and settlements were approved by the bankruptcy court and after the original claims-holders had voted on the Plan and after Plan confirmation. As later explained,

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<sup>5</sup> In its original Motion for Leave filed at Bankruptcy Docket No. 3699 on March 28, 2023, HMIT sought leave to file the proposed complaint ("Initial Proposed Complaint") attached as Exhibit 1 to the Motion for Leave. Nearly a month later, on April 23, 2023, HMIT filed a *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* ("Supplement") [Bankr. Dkt. No. 3760], a revised proposed complaint as Exhibit 1-A, and stating that "[t]he Supplement is not intended to supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action." Supplement, ¶ 1 and Exhibit 1-A. It is this revised proposed complaint to which this court will refer, when it uses the defined term "Proposed Complaint," even though HMIT filed redacted versions of its Motion for Leave on June 5, 2023 at Bankruptcy Docket Nos. 3815 and 3816 that attached the Initial Proposed Complaint as Exhibit 1.

<sup>6</sup> The Claims Purchasers identified in the Proposed Complaint are Farallon Capital Management, LLC ("Farallon"); Muck Holdings, LLC ("Muck"), which is a special purpose entity created by Farallon to purchase allowed unsecured claims against Highland; Stonehill Capital Management, LLC ("Stonehill"); and Jessup Holdings, LLC ("Jessup"), which is a special purpose entity created by Stonehill to purchase allowed unsecured claims against Highland.

the Claims Purchasers filed notices of their purchases as required by Bankruptcy Rule 3001(e)(2), and no objections were filed thereto. In any event, various damages or remedies are sought against the Proposed Defendants revolving around the Claims Purchasers' claims purchasing activities.

C. *Why Does HMIT Need to Seek Leave?*

As alluded to above, HMIT filed its Motion for Leave to comply with the provision in the Plan known as a "gatekeeper" provision ("Gatekeeper Provision") and with this court's prior gatekeeper orders entered in January and July 2020, which all require that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain (1) a finding from the bankruptcy court that its proposed claims ("Proposed Claims") are "colorable"; and (2) specific authorization by the bankruptcy court to pursue the Proposed Claims.<sup>7</sup> The Gatekeeper Provision was not included in the Plan *sans raison*. Indeed, as the Fifth Circuit recognized in affirming confirmation of the Plan, the Gatekeeper Provision (along with the other "protection provisions" in the Plan) had been included in the Plan to address the "continued litigiousness" of Mr. James Dondero ("Dondero"), Highland's co-founder and former chief executive officer ("CEO"), that began prepetition and escalated following the post-petition "nasty breakup" between Highland and Dondero, by "screen[ing] and prevent[ing] bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan's effectiveness."<sup>8</sup>

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<sup>7</sup> To be clear, the Gatekeeper Provision in the Plan was not the first or even second injunction of its type issued in this bankruptcy case. The Gatekeeper Orders were entered by the bankruptcy court pre-confirmation: (a) in January 2020, just a few months into the case, as part of this court's order approving a corporate governance settlement between Highland and its unsecured creditors committee, in which Dondero, Highland's co-founder and former CEO, was removed from any management role at Highland and three independent directors ("Independent Directors") were appointed in lieu of a chapter 11 trustee being appointed ("January 2020 Order"); and (b) in July 2020, in this court's order authorizing the employment of Seery (one of the three Independent Directors) as the Debtor's new Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative ("July 2020 Order," together with the January 2020 Order, the "Gatekeeper Orders").

<sup>8</sup> See *Highland Capital*, 48 F.4th at 427, 435.

*D. Some Further Context Regarding Post-Confirmation Litigation Generally.*

Since confirmation of the Plan, hundreds of millions of dollars have been paid out to creditors under the Plan, and there are numerous adversary proceedings and contested matters still pending, at various stages of litigation, in the bankruptcy court, the district court, and the Fifth Circuit, almost exclusively involving Dondero and entities that he owns or controls. To be sure, the post-confirmation litigation in this case does not consist of the usual adversaries and contested matters one typically sees by and against a reorganized debtor and/or litigation trustee, such as preference or other avoidance actions and litigation over objections to claims that are still pending after confirmation of a plan. Indeed, the claims of the largest creditors in this case (with claims asserted in the aggregate of more than one billion dollars) were successfully mediated and incorporated into the Plan—a plan which was ultimately accepted by the votes of an overwhelming majority of Highland’s non-insider creditors. Dondero and entities under his control were the only parties who appealed the Confirmation Order, and Dondero and entities under his control have been the appellants in virtually every appeal that has been filed regarding this bankruptcy case. Petitions for writs of mandamus (which have been denied) have been filed in the district court and in the Fifth Circuit by some of these same entities, including one by HMIT, when this court denied setting an *emergency* hearing on the instant Motion for Leave (HMIT had sought a setting on three-days’ notice).

A recent list of active matters involving Dondero and/or entities and/or individuals affiliated or associated with him, filed in the bankruptcy case by Highland and the Claimant Trust, reveals that there were at least 30 pending and “Active Dondero-Related Litigation” matters as of July 14, 2023: six (6) proceedings in this court; six (6) active appeals or actions are pending in the District Court for the Northern District of Texas; seven (7) appeals in the Fifth Circuit; two (2)

petitions for writs of certiorari in the United States Supreme Court; and nine (9) other proceedings or actions with or affecting the Highland Parties (“Highland,” the “Claimant Trust,” and “Seery”) in various other state, federal, and foreign jurisdictions.<sup>9</sup>

The above-described context is included because the Proposed Defendants assert that the Motion for Leave is just a continuation of Dondero’s unrelenting barrage of meritless and harassing litigation, making good on his oft-mentioned alleged threat to “burn down the place” after not achieving the results he wanted in the Highland bankruptcy case. Indeed, the Motion for Leave was filed after two years of unsuccessful attempts by, first, Dondero personally, and then HMIT to obtain pre-suit discovery from the Proposed Defendants (i.e., the Claims Purchasers) through two different Texas state court proceedings, pursuant to Tex. R. Civ. P. 202 (“Rule 202”). In each of these Rule 202 proceedings, Dondero and HMIT espoused the same Seery/Claims

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<sup>9</sup> See Bankr. Dkt. No. 3880 (filed on July 14, 2023, providing a list of “Active Dondero-Related Litigation” and noting that the list is “a summary of active pending actions only and does not include actions that were resolved by final orders, including actions finally resolved after appeals to the U.S. District Court for the Northern District of Texas and/or the U.S. Court of Appeals for the Fifth Circuit.”). Just since the filing by the Highland Parties of the list, *three* of the appeals pending in the Fifth Circuit have been decided against the Dondero-related appellants, two of which upheld the district court’s dismissal of appeals by Dondero-related entities of bankruptcy court orders based on the lack of bankruptcy appellate standing on behalf of the appellant. On July 19, 2023, the Fifth Circuit affirmed the district court’s dismissal of an appeal by NexPoint Advisors, L.P. (“NexPoint”) of bankruptcy court orders approving professional compensation on the basis that NexPoint did not meet the bankruptcy appellate standing test of being a “person aggrieved” by the entry of the orders. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, 74 F.4th 361 (5th Cir. 2023). On July 31, 2023, the Fifth Circuit affirmed the district court’s dismissal of an appeal by Dugaboy—the Dondero family trust that, like the movant here in this Motion for Leave, was the holder of a limited partnership interest in Highland, and, as such, now has a contingent interest in the Claimant Trust—which had appealed a bankruptcy court order approving a Rule 9019 settlement on the same basis: Dugaboy did not meet the bankruptcy appellate standing test of being a “person aggrieved” by the entry of the settlement order. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). The July 31, 2023 ruling followed the Fifth Circuit’s ruling on February 21, 2023, affirming the district court’s dismissal of an appeal by Dugaboy of yet another bankruptcy court order for lack of bankruptcy appellate standing. *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023). These rulings by the Fifth Circuit are discussed in greater detail below. The third ruling by the Fifth Circuit since July 14, 2023, was issued by the Fifth Circuit in a per curium opinion not designated for publication on July 26, 2023, this one affirming the district court’s affirmance of yet another Rule 9019 settlement order of the bankruptcy court that was appealed by Dugaboy, agreeing with the district court that the bankruptcy court had jurisdiction to approve a settlement among the Debtor, an entity affiliated with the Debtor but not a debtor itself, and UBS (the Debtor’s largest prepetition creditor and the seller of its claims to the Claims Purchasers, which is one of the claims trading transactions HMIT complains about in the Proposed Complaint). See *The Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 26, 2023).

Purchasers conspiracy theory espoused in the Motion for Leave—that Seery must have provided one or more of the Claims Purchasers with material nonpublic information to induce them to want to purchase large, allowed, unsecured claims at a discount; a *quid pro quo* is suggested, such that the Claims Purchasers were allegedly told they would make a hefty profit on the claims they purchased and, in return, they would gladly “rubber stamp” Seery’s “excessive compensation” as the Claimant Trustee of the Claimant Trust. In sum, HMIT alleges this constituted wrongful “insider trading” of the bankruptcy claims. In addition, certain lawyers for Dondero and Dugaboy sent letters reporting this alleged conspiracy and “insider trading” to the Texas State Securities Board (“TSSB”) and the Executive Office of the United States Trustee (“EOUST”).

It is against this background and in this context that the court must analyze, in the exercise of its gatekeeping function under the confirmed Plan and its prior Gatekeeping Orders, whether HMIT should be allowed to pursue the Proposed Claims (i.e., whether the Proposed Claims are “colorable” claims as contemplated under the Gatekeeper Orders and the Gatekeeper Provision of the Plan). The court held an evidentiary hearing on the Motion for Leave on June 8, 2023 (“June 8 Hearing”), during which the court admitted exhibits and heard testimony from three witnesses both in support of and in opposition to the Motion for Leave. Having considered the Motion for Leave, the response of the Proposed Defendants thereto, HMIT’s reply to the response, and the arguments and evidence presented at the hearing on the Motion for Leave, the court denies HMIT’s request for leave to pursue its Proposed Claims. The court’s reasoning is set forth below.

## II. BACKGROUND

### A. *Highland’s Bankruptcy Case, Dondero’s Removal as CEO, and the Plan*

Highland was co-founded in Dallas in 1993 by Dondero and Mark Okada (“Okada”). It operated as a global investment adviser that provided investment management and advisory services and managed billions of dollars of assets, both directly and indirectly through numerous

affiliates. Highland’s equity interest holders included HMIT (99.5%), Dugaboy (0.1866%), Okada, personally and through trusts (0.0627%), and Strand Advisors, Inc. (“Strand”), which was wholly owned by Dondero and was the only general partner of Highland (0.25%). On October 16, 2019 (the “Petition Date”), Highland, with Dondero in control<sup>10</sup> and acting as its CEO, president, and portfolio manager, and facing a myriad of massive, business litigation claims – many of which had finally become or were about to be liquidated (after a decade or more of contentious litigation in multiple fora all over the world—filed for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The bankruptcy case was transferred to the Northern District of Texas, Dallas Division in December 2019. The official committee of unsecured creditors (the “Committee”) (and later, the United States Trustee) expressed a desire for the appointment of a chapter 11 trustee due to concerns over and distrust of Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

After many weeks under the specter of a possible appointment of a trustee, Highland and the Committee engaged in substantial and lengthy negotiations, resulting in a corporate governance settlement approved by this court on January 9, 2020.<sup>11</sup> As a result of this settlement, Dondero relinquished control of Highland and resigned his positions as officer or director of Highland and its general partner, Strand,<sup>12</sup> and three independent directors (“Independent Directors”) were

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<sup>10</sup> Mark Okada resigned from his role with Highland prior to the Petition Date.

<sup>11</sup> This order is hereinafter referred to as the “January 2020 Order” and was entered by the court on January 9, 2020 [Bankr. Dkt. No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Bankr. Dkt. No. 281].

<sup>12</sup> Dondero agreed to this settlement pursuant to a stipulation he executed and that was filed in connection with Highland’s motion to approve the settlement. *See Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Bankr. Dkt. No. 338].

chosen to lead Highland through its chapter 11 case: Seery, John S. Dubel, and retired bankruptcy judge Russell Nelms. Given the Debtor’s perceived culture of constant litigation while Dondero was at the helm, it was purportedly not easy to get such highly qualified persons to serve as independent board members. At the hearing on the corporate governance settlement motion, the court heard credible testimony that none of the Independent Directors would have taken on the role without (1) an adequate directors and officers’ (“D&O”) insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation from mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the Independent Directors without the bankruptcy court’s prior authority. The gatekeeper provision approved by the court in its January 9 Order states,<sup>13</sup>

No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director’s agents, or any Independent Director’s advisors relating in any way to the Independent Director’s role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director’s agents, or any Independent Director’s advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

Dondero agreed to remain with Highland as an unpaid portfolio manager following his resignation and did so “subject at all times to the supervision, direction and authority of the Independent Directors” and to his agreement to “resign immediately” “[i]n the event the Independent Directors determine for any reason that the Debtor shall no longer retain Dondero as an employee”<sup>14</sup> and to “not cause any Related Entity to terminate any agreements with the Debtor.”<sup>15</sup> The court later

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<sup>13</sup> January 2020 Order, 3-4, ¶ 10.

<sup>14</sup> January 2020 Order, 3, ¶ 8.

<sup>15</sup> *Id.* at ¶ 9.

entered, on July 16, 2020, an order approving the appointment of Seery as Highland’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative,<sup>16</sup> which included essentially the same “gatekeeper” language with respect to the pursuit of claims against Seery acting in these roles. The gatekeeper provision in the July 2020 Order was essentially the same as the gatekeeper provision in the January 2020 Order:

No entity may commence or pursue a claim or cause of action of any kind against Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

July 2020 Order, 3, ¶5. Neither the January 2020 Order nor the July 2020 Order were appealed.

Throughout the summer of 2020, Dondero informally proposed several reorganization plans, none of which were embraced by the Committee or the Independent Directors. When Dondero’s plans failed to gain support, he and entities under his control engaged in substantial, costly, and time-consuming litigation for Highland.<sup>17</sup> As the Fifth Circuit described the situation, after Dondero’s plans failed “he and other creditors began to frustrate the proceedings by objecting to settlements, appealing orders, seeking writs of mandamus, interfering with Highland Capital’s management, threatening employees, and canceling trades between Highland Capital and its clients.”<sup>18</sup> On October 9, 2020, Dondero resigned from all positions with the Debtor and its

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<sup>16</sup> See the July 16, 2020 order approving the retention by Highland of Seery as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative, *nunc pro tunc*, to March 15, 2020 (“July 2020 Order”) [Bankr. Dkt. No. 854].

<sup>17</sup> According to Seery’s credible testimony during the hearing on confirmation of the Plan that had been negotiated between the Committee and the Independent Directors, Dondero had threatened to “burn the place down” if his proposed plan was not accepted. See Transcript of Confirmation Hearing dated February 3, 2021 at 105:10-20. Bankr. Dkt. No. #1894.

<sup>18</sup> *Highland Capital*, 48 F.4th at 426 (citing *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Capital Mgmt., L.P.)*, Ch. 11 Case No. 19-34054-SGJ11, Adv. No. 20-03190-SGJ11, 2021 WL 2326350, at \*1, \*26 (Bankr. N.D. Tex.

affiliates in response to a demand by the Independent Directors made after Dondero’s purported threats and disruptions to the Debtor’s operations.<sup>19</sup>

The Independent Directors and the Committee had negotiated their own plan of reorganization which culminated in the filing by Highland of its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the “Plan”) [Bankr. Dkt. No. 1808] on January 22, 2021.<sup>20</sup> Highland had negotiated settlements with most of its major creditors following mediation and had amended its initially proposed plan to address the objections of most of its creditors, leaving only the objections of Dondero and entities under his control (the “Dondero Parties”) at the time of the confirmation hearing,<sup>21</sup> which was held over two days in early February 2021. The Plan is essentially an “asset monetization” plan pursuant to which the Committee was dissolved, and four new entities were created: the Reorganized Debtor; a new general partner for the Reorganized Debtor called HCMLP GP, LLC; the Claimant Trust (administered by Seery, its trustee); and a Litigation Sub-Trust (administered by its trustee, Marc Kirschner). Highland’s various servicing agreements were vested in the Reorganized Debtor, which continues to manage collateralized loan obligation vehicles (“CLOs”) and various other investments postconfirmation. The Claimant Trust owns the limited partnership interests in the Reorganized Debtor, HCMLP GP LLC, and the Litigation Sub-Trust and is charged with winding down the Reorganized Debtor over a three-year period by monetizing its assets and making

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June 7, 2021) where this court “h[eld] Dondero in civil contempt, sanctioning him \$100,000, and comparing this case to a ‘nasty divorce.’”).

<sup>19</sup> See Highland Ex. 13. The court shall refer to exhibits offered and admitted at the June 8 Hearing on the Motion for Leave by the Highland Parties as “Highland Ex. \_\_\_” and to exhibits offered and admitted by HMIT as “HMIT Ex. \_\_\_.”

<sup>20</sup> The *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* was filed on November 24, 2020 (“Disclosure Statement”) [Bankr. Dkt. No. 1473].

<sup>21</sup> The only other objection remaining was the objection of the United States Trustee to the Plan’s exculpation, injunction, and release provisions.

distributions to Class 8 and Class 9 creditors as Claimant Trust Beneficiaries. The Claimant Trust is overseen by a Claimant Trust Oversight Board (“CTOB”), and pursuant to the terms of the Plan and the Claimant Trust Agreement (“CTA”),<sup>22</sup> the CTOB approved Seery’s compensation package as the CEO of the Reorganized Debtor and the Claimant Trustee. Following their acquisition of their unsecured claims, representatives of Claims Purchasers Muck and Jessup became members of the CTOB.<sup>23</sup> Seery’s compensation included the same base salary that he was receiving as CEO and CRO of Highland, plus an added incentive bonus tiered to recoveries and distributions to the creditors under the Plan. The Plan provides for the cancellation of the limited partnership interests in Highland held by HMIT, Dugaboy, and Okada and his family trusts in exchange for each holder’s pro rata share of a contingent interest in the Claimant Trust (“Contingent Claimant Trust Interest”), as holders of allowed interests in Class 10 (holders of Class B/C limited partnership interests) or Class 11 (holders of Class A limited partnership interests) under the Plan.

*B. Dondero Communicates Alleged Material Non-Public Information (“MNPI”) to Seery, and Seery Allegedly Provides the MNPI to the Claims Purchasers in Furtherance of an Alleged Fraudulent Scheme to Have the Claims Purchasers “Rubber Stamp” His Compensation as Claimant Trustee Post-Confirmation*

1. The December 17, 2020 MGM Email

Between Dondero’s forced resignation from Highland in October 2020 and the confirmation hearing in February 2021, Dondero engaged in what appeared to be attempts to thwart, impede, and otherwise interfere with the Plan being proposed by the Independent Directors and the Committee. In the midst of this, on December 17, 2020, Dondero sent Seery<sup>24</sup> an email

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<sup>22</sup> Highland Ex. 38

<sup>23</sup> The CTOB had three members: a representative of Muck (Michael Linn), a representative of Jessup (Christopher Provost), and an independent member (Richard Katz). See Joint Opposition ¶ 79.

<sup>24</sup> Dondero sent the email to others as well but did not copy counsel for the Independent Directors (including Seery) in violation of the terms of an existing temporary restraining order that enjoined Dondero from, among other things, “communicating . . . with any Board member” (including Seery) without including Debtor’s counsel. Morris Dec. Ex. 23 ¶ 2(a). Citations to “Morris Dec. Ex. \_” are to the exhibits attached to the *Declaration of John A. Morris in Support*

(the “MGM Email”) that featured prominently in HMIT’s Motion for Leave. According to HMIT and Dondero, the MGM Email contained material nonpublic information (“MNPI”) regarding the possibility of an imminent acquisition of Metro-Goldwyn-Mayer Studios, Inc. (“MGM”), likely by either Amazon or Apple.<sup>25</sup> At the time Dondero sent the MGM Email, Dondero sat on the board of directors of MGM, and the Debtor owned MGM stock directly. The Debtor also managed and partially owned a couple of other entities that owned MGM stock and managed various CLOs that owned some MGM stock as well. HMIT alleges now that Seery later misused and wrongfully disclosed to the Claims Purchasers this purported MNPI as part of a *quid pro quo* scheme, whereby the Claims Purchasers agreed to approve excessive compensation for Seery in the future (in exchange for him providing this allegedly “insider” information that inspired them to purchase unsecured claims with an alleged expectation of future large profits).<sup>26</sup> A timeline of events (in late 2020) in the weeks leading up to Dondero’s MGM Email to Seery, following Dondero’s departure from Highland, helps to put the email in full context:

- October 16: Dondero and his affiliates attempt to impede the Debtor’s trading activities by demanding—with no legal basis—that Seery cease selling certain assets;<sup>27</sup>
- November 24: Bankruptcy Court enters an Order approving the Debtor’s Disclosure Statement, scheduling the confirmation hearing on the Debtor’s Plan for January 13, 2021, and granting related relief;<sup>28</sup>
- November 24–27: Dondero personally interferes with the Debtor’s

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*of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.’s Joint Opposition to Hunter Mountain Investment Trust’s Motion for Leave to File Verified Adversary Proceeding*, Bankr. Dkt. No. 3784.

<sup>25</sup> See Proposed Complaint ¶ 45.

<sup>26</sup> See *id.* ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the [Claims Purchasers], with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”); ¶ 4 (“As part of the scheme, the [Claims Purchasers] obtained a position to approve Seery’s ongoing compensation – to Seery’s benefit and also to the detriment of the Claimant Trust, the Reorganized Debtor, and HMIT.”).

<sup>27</sup> See Highland Ex. 14, Dondero-Related Entities’ October 16, 2020 Letter; Highland Ex. 15, *Memorandum Opinion and Order Holding Dondero in Contempt for Violation of TRO*, 13-15.

<sup>28</sup> See Bankr. Dkt. No. 1476.

implementation of certain securities trades ordered by Seery;<sup>29</sup>

- November 30: The Debtor provides written notice of termination of certain shared services agreements it had with Dondero’s two non-debtor affiliates, NexPoint Advisors, L.P. (“NexPoint”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”; together with NexPoint, the “Advisors”);<sup>30</sup>
- December 3: The Debtor makes written demands to Dondero and certain affiliates for payment of all amounts due under certain promissory notes they owed to the Debtor, that had an aggregate face amount of more than \$60 million—this was part of creating liquidity for the Debtor’s Plan;<sup>31</sup>
- December 3: Dondero responds with what appeared to be a threat of some sort to Seery in a text message: “*Be careful what you do -- last warning*”;<sup>32</sup>
- December 10: Dondero’s interference and apparent threat cause the Debtor to seek and obtain a temporary restraining order (“TRO”) against Dondero;<sup>33</sup>
- December 16: This court denies as “frivolous” a motion filed by certain affiliates of Dondero, in which they sought “temporary restrictions” on certain asset sales;<sup>34</sup> and
- December 17: Dondero sends the unsolicited MGM Email<sup>35</sup> to Seery, which violates the TRO entered just a week earlier.<sup>36</sup>

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<sup>29</sup> See Highland Ex. 15, 30-36.

<sup>30</sup> Morris Decl. Ex. 17; see also Transcript of June 8, 2023 Hearing on HMIT’s Motion for Leave (“June 8 Hearing Transcript”), 273:23-24.

<sup>31</sup> Morris Decl. Exs. 18-21; see also June 8 Hearing Transcript, 273:23-274:1.

<sup>32</sup> Morris Decl. Ex. 22 (emphasis added); see also June 8 Hearing Transcript, 273:1-12 (where Seery testified about receiving the threat from Dondero: “A: [T]his came after he threatened me. He threatened me in writing. I’d never been threatened in my career. I’ve never heard of anyone else in this business who’s been threatened in their career. So anything I would get from him, I was going to be highly suspicious.”).

<sup>33</sup> See Morris Decl. Ex. 23, *Order Granting Debtor’s Motion for a Temporary Restraining Order Against James Dondero* entered December 10, 2020 [Adv. Pro. No. 20-3190 Dkt. No. 10].

<sup>34</sup> See Morris Decl. Ex. 24, Transcript of December 16, 2020 Hearing, 63:5-64:15.

<sup>35</sup> Highland Ex. 11.

<sup>36</sup> Seery testified at the June 8 Hearing that Dondero knowingly violated the TRO when he sent the MGM Email:

[The MGM Email] . . . followed the imposition of a TRO for interfering with the business. He knew what was in the TRO and he knew what it applied to, and it restricted him from communicating with me or any of the other independent directors without Pachulski [Debtor’s counsel] being on it. Furthermore, Pachulski had advised Dondero’s counsel that not only could they not communicate with us, if they wanted to communicate they had to prescreen the topics. And how do we know that? Because Dondero filed a motion to modify the TRO. And that was all before this email.

June 8 Hearing Transcript, 273:13-22.

The MGM Email had the subject line “Trading Restriction re MGM – material non public information” and stated:

Just got off a pre board call, board call at 3:00. Update is as follows: Amazon and Apple actively diligencing in Data Room. Both continue to express material interest. Probably first quarter event, will update as facts change. Note also any sales are subject to a shareholder agreement.<sup>37</sup>

Seery credibly testified at the June 8 Hearing that he was “highly suspicious” when he received the MGM Email. This was because, among other reasons, Dondero sent it *after*: (i) unsuccessful efforts to impede the Debtor’s trading activities (followed by the TRO); (ii) the “be careful what you do” text to Seery by Dondero; (iii) Highland’s termination of its shared service arrangements with Dondero’s various affiliated entities; (iv) the bankruptcy court’s approval of the disclosure statement; and (v) Highland’s demand to collect on the demand notes for which Dondero and his entities were liable.<sup>38</sup> Highland’s Chapter 11 case was fast approaching the finish line. Moreover, MGM was already on the restricted list at Highland Capital, and had been for a long time, and Dondero would know this.<sup>39</sup> Still further, as of December 17, 2020 (the date Dondero sent the unsolicited MGM Email to Seery), Dondero no longer owed a duty of any kind to the Debtor or any entity controlled by the Debtor, having surrendered in January 2020 direct and indirect control of the Debtor to the Independent Board as part of the corporate governance settlement<sup>40</sup> and having resigned from all roles at the Debtor and affiliates in October 2020. Still further, Dondero—to the extent he was sharing with Seery MNPI that he obtained as a member of the board of directors of MGM—would have been violating his own fiduciary duties to MGM.

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<sup>37</sup> Highland Ex. 11.

<sup>38</sup> June 8 Hearing Transcript, 273:1-274:4.

<sup>39</sup> June 8 Hearing, 215:21-216:9.

<sup>40</sup> See Bankr. Dkt. Nos. 339, 354-1 (Term Sheet)).

In any event, in a declaration filed by Dondero in support of HMIT’s Rule 202 petition in Texas state court for pre-suit discovery,<sup>41</sup> he indicated that his goal in sending the MGM E-mail was to impede the Debtor and Seery from engaging in any transactions involving MGM:

On December 17, 2020, I sent an email to employees at HCM, including the then Chief Executive Officer and Chief Restructuring Officer Jim Seery, containing non-public information regarding Amazon and Apple’s interest in acquiring MGM. I became aware of this information due to my involvement as a member of the board of MGM. ***My purpose was to alert Seery and others that MGM stock, which was owned either directly or indirectly by HCM, should be on a restricted list and not be involved in any trades.***

It is noteworthy that *Dondero’s labeling of the MGM Email (in the subject line) as a communication containing “material non public information” did not make it so.* In fact, it appears from the credible evidence presented at the June 8, 2023 hearing on HMIT’s Motion for Leave that the MGM Email did not disclose information to Seery that was not already made available to the public at the time it was sent. Seery testified that he did not think the MGM Email contained MNPI and that he did not personally “take any steps . . . to make sure that MGM stock was placed on a restricted list at Highland Capital after [he] received [the MGM Email]” because—as earlier noted—“MGM was already on the restricted list at Highland Capital . . . before I got to Highland.”<sup>42</sup> Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months<sup>43</sup> and that was officially

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<sup>41</sup> Highland Ex. 9 ¶ 3 (emphasis added).

<sup>42</sup> June 8 Hearing Transcript, 215:21-216:9. Seery elaborated upon further questioning from HMIT’s counsel that he did not think the indications in the MGM Email (that came from a member of the board of directors of MGM) that “it was probably a first-quarter event” and that “Amazon and Apple were actively diligencing – are diligencing in the data room, both continue to express material interest” were not MNPI. *Id.*, 217:23-218:10. He testified that “it was clear [before he received the MGM Email] from the media reports and the actual quotes from Kevin Ulrich of Anchorage, who was the chairman at MGM, that a transaction would have to take place very quickly. And, in fact, the transaction did not take place in the first quarter.” *Id.*, 219:3-7.

<sup>43</sup> See Highland Ex. 25 (“MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.”) (article dated 1/26/20); Highland Ex. 26 (describing prospects of an MGM sale, noting that, among its largest

announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months *before* certain of their claims—the UBS claims—were purchased).<sup>44</sup> For example, as early as January 2020, Apple and Amazon were identified as being among a new group of “Big 6” global media companies, and MGM was identified as being a leading media acquisition target. Indeed, according to at least one media report on January 26, 2020, “MGM, in particular, seems like a logical candidate to sell this year” having already held “preliminary talks with Apple, Netflix and other larger media companies.”<sup>45</sup> In October 2020, the Wall Street Journal reported that MGM’s largest shareholder, Anchorage Capital Group (“Anchorage”), was facing mounting pressure to sell the company. Anchorage was led by Kevin Ulrich, who also served as Chairman of MGM’s Board. The article reported that “[i]n recent months, Mr. Ulrich has said he is working toward a deal,” and he specifically named Amazon and Apple as being among four possible buyers.<sup>46</sup> Thus, no one following the MGM story would have been surprised to learn in December 2020 that Apple and Amazon were conducting due diligence and had expressed “material interest” in acquiring MGM. Dondero testified during the June 8 Hearing that, at the time he sent the MGM Email, he “knew with certainty from the board level that Amazon had hit our price, and it was going to close in the next couple of months,”<sup>47</sup> that “as of December 17th, Amazon had made an offer that was acceptable to MGM, [and that] that’s what the board meeting was. We were going into exclusive negotiations to culminate the merger with

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shareholders, was “Highland Capital Management, LP”) (article October 11, 2020). *See also* Highland Exs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for \$8.4 billion).

<sup>44</sup> The MGM-Amazon deal was ultimately consummated in March 2022 for approximately \$6.1 billion, net of cash acquired, plus approximately \$2.5 billion in debt that Amazon assumed and immediately repaid.

<sup>45</sup> Highland Ex. 25.

<sup>46</sup> Highland Ex. 26.

<sup>47</sup> June 8 Hearing Transcript, 127:2-4.

them.”<sup>48</sup> Notwithstanding this testimony, Dondero eventually admitted (after a lengthy and torturous cross examination) that he did not actually communicate this supposed “inside” information to Seery in the MGM Email. He did not “say anything about Amazon hitting the price.” He did not say anything about the MGM board going into exclusive negotiations with Amazon “to culminate the merger with them.” Rather, he communicated information that Seery and any member of the public who cared to look could have gleaned from publicly available information as of December 17, 2020, regarding a much-written-about potential MGM transaction that involved interest from numerous companies, including, specifically, Amazon and Apple. When questioned why “[he felt] the need to mention Apple [in the MGM Email] if Amazon had already hit the price,” Dondero simply answered, “The only way you generally get something done at attractive levels in business is if two people are interested,” suggesting that he specifically **did not** communicate the purported inside information he obtained as a MGM board member—that Amazon had met MGM’s strike price and that the MGM board was moving forward with exclusive negotiations with Amazon—because he wanted it to appear that there was still a competitive process going on that included both Amazon and Apple.<sup>49</sup>

Even if the MGM Email contained MNPI on the day it was sent (four months prior to the first of the Claim Purchases that occurred in April 2021), the information was fully and publicly disclosed to the market in the days and weeks that followed. For example, on December 21, 2020, just four days later, a Wall Street Journal article titled *MGM Holdings, Studio Behind ‘James Bond,’ Explores a Sale*, reported that MGM had “tapped investment banks Morgan Stanley and LionTree LLC and begun a formal sale process,” and had “a market value of around \$5.5 billion, based on privately traded shares and including debt.” The Wall Street Journal Article reiterated

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<sup>48</sup> *Id.*, 161:10-14.

<sup>49</sup> June 8 Hearing Transcript, 162:2-6.

that (i) Anchorage “has come under pressure in recent years from weak performance and defecting clients, and its illiquid investment in MGM has become a larger percentage of its hedge fund as it shrinks,” and (ii) “Mr. Ulrich has told clients in recent months he was working toward a deal for the studio and has spoken of big technology companies as logical buyers.”<sup>50</sup> (*Id.* Ex. 27.) The Wall Street Journal’s reporting was picked up and expanded upon in other publications soon after.

For example:

- On December 23, 2020, Business Matters published an article specifically identifying Amazon as a potential suitor for MGM. The article, titled *The world is not enough! Amazon joins other streaming services in £4bn bidding war for Bond films as MGM considers selling back catalogue*, cited the Wall Street Journal article and further reported that MGM “hopes to spark a battle that could interest streaming services such as Amazon Prime”;<sup>51</sup>
- On December 24, 2020, an article in iDropNews specifically identified Apple as entering the fray. In an article titled *Could Apple be Ready to Gobble Up MGM Studios Entirely?*, the author observed that “it’s now become apparent that MGM is actually up on the auction block,” noting that the Wall Street Journal was “reporting that the studio has begun a formal sale process” and that Apple—with a long history of exploratory interest in MGM—would be a likely bidder;<sup>52</sup> and
- On January 15, 2021, Bulwark published an article entitled *MGM is For Sale (Again)* that identified attributes of MGM likely to appeal to potential purchasers and handicapped the odds of seven likely buyers—with Apple and Amazon named as two of three potential buyers most likely to close on an acquisition.<sup>53</sup>

Finally, Highland and entities it controlled did not sell their MGM stock while the MGM-Amazon deal was under discussion and/or not made public but, instead, they tendered their MGM holdings in connection with, and as part of, the ultimate MGM-Amazon transaction after it closed in March 2022.

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<sup>50</sup> Highland Ex. 27.

<sup>51</sup> Highland Ex. 28.

<sup>52</sup> Highland Ex. 29.

<sup>53</sup> Highland Ex. 30.

2. No Evidence to Support HMIT/Dondero’s Assumptions that Seery Shared Alleged MNPI in the MGM Email with Claims Purchasers

One of HMIT’s allegations in the Proposed Complaint it seeks leave to file—which is central to HMIT’s and Dondero’s conspiracy theory—is that Seery shared the alleged MNPI from the MGM Email with the Claims Purchasers (or at least Farallon—the owner/affiliate of Muck, one of the Claims Purchasers) and that the Claims Purchasers only acquired the purchased claims (“Purchased Claims”) based on, and because, of their receipt of the MNPI from Seery. HMIT essentially admits in the original version of its Motion for Leave that it has no direct evidence that Seery communicated the alleged MNPI to any of the Claims Purchasers. Rather, its allegation is based on inferences it wants the court to make based on “circumstantial” evidence and on the Dondero Declarations that were attached to the Motion for Leave, which described communications Dondero purportedly had with one or two representatives of Farallon in the “late spring” of 2021 concerning Farallon’s recent acquisition of certain claims in the Highland bankruptcy case.<sup>54</sup> Based on these communications, HMIT and Dondero only assume Seery must have provided the MNPI about MGM to Farallon, which must have caused both Farallon and the other Claims Purchaser, Stonehill, to acquire the Purchased Claims.<sup>55</sup>

At the June 8 Hearing, HMIT offered Dondero’s testimony that he had three telephone conversations with two representatives of Farallon, Mike Linn (“Linn”) and Raj Patel (“Patel”),

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<sup>54</sup> Motion for Leave (Bankr. Dkt. No. 3699) ¶ 1 and Ex. 3; *see also* Highland Ex. 9, *Declaration of James Dondero* (with Exhibit 1) dated February 15, 2023.

<sup>55</sup> Motion for Leave (Bankr. Dkt. No. 3699) ¶ 28. HMIT subsequently filed the final version of the Motion for Leave that was revised to withdraw the Dondero Declarations and delete all references therein to the Dondero Declarations (but, notably, leaving in the allegations that were based on the Dondero Declaration(s)). This was done after the court ruled that it would allow the Proposed Defendants to examine Dondero regarding his Declarations. HMIT contended at that point that the court should consider the Motion for Leave on a no-evidence Rule 12(b)(6) type basis (but could not explain why it had attached the Dondero Declarations as evidence that “supported” the Motion for Leave, if it believed no evidence should be considered). *See* Motion for Leave (Bankr. Dkt. No. 3816) ¶ 28; *see also infra* pages 45 to 47 regarding the “sideshow” litigation that occurred prior to the June 8 Hearing over whether the hearing on the Motion for Leave would be an evidentiary hearing.

who allegedly told him that they purchased the claims without conducting any due diligence and based solely on Seery’s assurances that the claims were valuable. These conversations allegedly took place on May 28, 2021—two days after the MGM-Amazon deal was officially announced to the public (on May 26, 2021). Dondero also testified that a photocopy of handwritten notes (“Dondero Notes”)<sup>56</sup> (which were partially cut off) were notes he took contemporaneously with these short telephone conversations he initiated (one with Patel and two follow-up conversations with Linn).<sup>57</sup> He testified that his purpose in taking these notes and in initiating the phone calls was that “[w]e’d been trying nonstop to settle the case for two-plus years. . . . [a]nd when we heard the claims traded, we realized there were new parties to potentially negotiate to resolve the case . . . [s]o I reached out [to] the Farallon guys,”<sup>58</sup> and further, on *voir dire* from the Proposed Defendants’ counsel, that the purpose of taking the notes was so that he had “a written record of the important points that [he] discussed . . . so I know how to address it the next time.”<sup>59</sup> The handwritten notes<sup>60</sup> stated:

<i>Raj Patel bought it because of Seery</i>	1
<i>50-70¢ not compelling</i>	2
<i>Class 8</i>	3
<i>Asked what would be compelling</i>	4
<i>-- No Offer</i>	5
<i>Bought in Feb/March timeframe</i>	6
<i>Bought assets w/ Claims</i>	7
<i>Offered him 40-50% premium</i>	8
<i>130% of cost; “Not Compelling”</i>	9
<i>No Counter; Told Discovery coming</i>	10

<sup>56</sup> HMIT Ex. 4. The handwritten notes were admitted into evidence after *voir dire*, not for the truth of anything Patel or Linn allegedly said to him during the three telephone conversations, but as Dondero’s “present sense impression” of the telephone conversations.

<sup>57</sup> June 8 Hearing Transcript, 133:1-136:3.

<sup>58</sup> *See id.*, 133:13-23.

<sup>59</sup> *See id.* (on *voir dire*), 144:1838-145:4.

<sup>60</sup> HMIT Ex. 4. The court has placed in a table and numbered each line for ease of reference. The table does not include the separate apparent partial date from the top left corner that Dondero testified was the date that he made the initial call to Patel: May 28, 2021.

On direct examination, Dondero testified that line 1 is what he wrote contemporaneously with the short call he initiated to Patel of Farallon in which Patel allegedly told Dondero “that he bought it because Seery told him to buy it and they had made money with Seery before”<sup>61</sup> and that Farallon “bought [the claim] because he was very optimistic regarding MGM”<sup>62</sup> before referring him to Linn, a portfolio manager at Farallon. Dondero testified that the rest of the handwritten notes (reflected in lines 2 through 10 of the table) were notes he took contemporaneously with two telephone conversations he had with Linn following his call to Patel, with lines 2-8 referring to Dondero’s first call with Linn and lines 9 and 10 referring to his second call with Linn.<sup>63</sup> Dondero testified that the “50-70¢” in line 2 referred to his offer to Linn to pay 70 cents on the dollar to buy Farallon’s<sup>64</sup> claims because “[w]e knew that they had – that the claims had traded around 50 cents” and “[w]e wanted to prevent the \$5 million-a-month burn” (referring to attorney’s fees in the Highland case) and that “not compelling Class 8” in lines 2-3 referred to Linn’s response to him that the offer was not compelling.<sup>65</sup> Dondero testified that lines 4-5 referred to him asking Linn what amount would be compelling and to Linn’s response that “he had no offer.”<sup>66</sup> Dondero testified that lines 6-8 referred to Linn telling Dondero that Farallon bought the claims in the February, March timeframe and that Dondero told Linn that, given that the estate was spending \$5 million a month on legal fees, Farallon should want to sell its claims and Linn’s alleged response that “Seery told him it was worth a lot more.”<sup>67</sup> Lastly, Dondero testified on direct examination

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<sup>61</sup> June 8 Hearing Transcript, 134:7-10, 135:13-22.

<sup>62</sup> *Id.*, 139:3-11.

<sup>63</sup> *Id.*, 136:4-138:16.

<sup>64</sup> As noted above, Farallon did not acquire any of the Purchased Claims; rather, Farallon created a special purpose entity, Muck, to acquire the claims.

<sup>65</sup> June 8 Hearing Transcript, 136:4-16.

<sup>66</sup> *Id.*, 136:17-23.

<sup>67</sup> *Id.*, 137:6-138:7.

that the last two lines referred to a second telephone conversation he had with Linn in which Dondero offered 130 percent of cost for the claims and that Linn told him that the offer was not compelling, and he would not give a price at which he would sell.<sup>68</sup>

On cross-examination, Dondero acknowledged that, though he had testified that the handwritten notes were intended to be a written record of the important points from the telephone conversations he had with Patel and Linn, there was no mention in the notes of: (1) MGM; (2) or that Farallon was very optimistic about MGM; (3) the sharing of MNPI; (4) a *quid pro quo*; or (5) Seery's compensation, and that his last note—"Told Discovery coming"—was a reference to Dondero telling Linn (not Linn telling Dondero) that discovery was coming in response to Dondero's own supposition that Farallon must have traded on MNPI.<sup>69</sup> Cross-examination also revealed that Farallon never told Dondero that Seery gave them MNPI, and that Dondero only ***believed*** Seery ***must have*** given Farallon MNPI, because Farallon (Patel and Linn) had told him that the only reason Farallon bought their claims was because of their prior dealings with Seery, which Dondero took to mean that they had conducted no due diligence on their own prior to acquiring the claims. Dondero also testified that he did not have any personal knowledge as to how Seery's compensation package, as CEO of the Reorganized Debtor and Claimant Trustee, was determined because he was "not involved" in the setting of Seery's compensation pursuant to the Claimant Trust<sup>70</sup> and that he never discussed Seery's compensation with Farallon.<sup>71</sup>

As noted earlier, Dondero attempted to obtain discovery from the Claims Purchasers in a Texas state court pursuant to Rule 202 of the Texas Rules of Civil Procedure. The Texas state

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<sup>68</sup> *Id.*, 138:8-22.

<sup>69</sup> *Id.*, 190:14-191:25. Dondero testified that he told Linn that discovery "would be coming in the next few weeks" and noted that "this has been a couple years. . . . [w]e've been trying for two years to get . . . discovery in this."

<sup>70</sup> *Id.*, 200:13-201:1.

<sup>71</sup> *Id.*, 208:23-209:8.

court denied the First Rule 202 petition on June 1, 2022, after having considered the amended petition, the responses, the record, applicable authorities and having conducted a hearing on the petition on June 1, 2022.<sup>72</sup>

3. Dondero Unsuccessfully Seeks Discovery and to Have Various Agencies and Courts Outside of the Bankruptcy Court Acknowledge His Insider Trading Theories

Dondero acknowledged at the June 8 Hearing that the verified petition (“First Rule 202 Petition”) he signed and filed on July 22, 2021, in the first Texas Rule 202 proceeding—just weeks after his telephone calls with Linn and Patel—was true and accurate. In it, he swore under oath as to what Linn told him in the telephone call concerning Farallon’s purchase of the claims, and the only reason he gave for wanting discovery was that Linn told him Farallon bought the claims “sight unseen—relying entirely on Seery’s advice solely because of their prior dealings.”<sup>73</sup> Dondero acknowledged, as well, that his sworn statement that he filed in support of an amended verified Rule 202 petition filed in the same Texas Rule 202 proceeding, but nearly ten months later (in May 2022), described the same telephone conversation he had with Linn, and it did not mention MGM at all and did not say that Linn told him that Seery gave him MNPI; rather, the sworn statement stated only that “On a telephone call between Petitioner and Michael Lin[n], a representative of Farallon, Mr. Lin[n] informed Petitioner that Farallon had purchased the claims sight unseen and with no due diligence—100% relying on Seery’s say-so because they had made so much money in the past when Seery told them to purchase claims” and that Linn did not tell him that Seery gave them MNPI, but he concluded that Seery gave Farallon MNPI based on what Linn did tell him.<sup>74</sup>

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<sup>72</sup> Highland Ex. 7.

<sup>73</sup> *Id.*, 193:8-194:16; Highland Ex. 3, *Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 21. The first Texas Rule 202 proceeding in which Dondero sought discovery regarding the Farallon acquisition of its claims was brought by Dondero, individually, in the 95th Judicial District, Dallas County, Texas.

<sup>74</sup> *Id.*, 195:11-197:17; Highland Ex. 4, *Amended Verified Petition to Take Deposition before Suit and Seek Documents*, ¶ 23.

Nine days later, Dondero filed a declaration in the same proceeding, in which he described the same call with Linn as follows:<sup>75</sup>

Last year, I called Farallon’s Michael Lin[n] about purchasing their claims in the bankruptcy. I offered them 30% more than what they paid. I was told by Michael Lin[n] of Farallon that they purchased the interests without doing any due diligence other than what Mr. James Seery—the CEO of Highland—told them, and that he told them that the interests would be worth far more than what Farallon paid. Given the value of those claims that Seery had testified in court, it made no sense to me that Mr. Lin[n] would think that the claims were worth more than what Seery testified under oath was the value of the bankruptcy claims.

Dondero further stated in his declaration that “I have an interest in ensuring that the claims purchased by [Farallon] are not used as a means to deprive the equity holders of their share of the funds,” and that “[i]t has become obvious that despite the fact that the bankruptcy estate has enough money to pay all claimants 100 cents on the dollar, there is plainly a movement afoot to drain the bankrupt estate and deprive equity of their rights. Accordingly, “I commissioned an investigation by counsel who have been in communication with the Office of the United States Trustee.”<sup>76</sup> Dondero attached as Exhibit A to his declaration a letter from Douglas Draper (“Draper”), an attorney with the law firm of Heller, Draper & Horn, L.L.C. in New Orleans, to the office of the General Counsel, Executive Office for U.S. Trustees, dated October 5, 2021, in which Draper opens the letter by stating that “[t]he purpose of this letter is to request that your office investigate the circumstances surrounding the sale of claims by members of the [Creditors’ Committee] in the bankruptcy of [Highland],” and later noted that he “became involved in Highland’s bankruptcy through my representation of [Dugaboy], an irrevocable trust of which Dondero is the primary beneficiary.”<sup>77</sup> Mr. Draper laid out the same allegations of insider claims trading, breach of

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<sup>75</sup> Highland Ex. 5, ¶ 2.

<sup>76</sup> *Id.*, ¶¶ 3-4.

<sup>77</sup> *Id.*, Ex. A, 1-2.

fiduciary duties, and conspiracy that HMIT seeks to bring in the Proposed Complaint.<sup>78</sup> The U.S. Trustee’s office took no action. Dondero made a second and third attempt to get the U.S. Trustee’s office to conduct an investigation into the same allegations laid out in Draper’s letter, this time in “follow-up” letters to the Office of the U.S. Trustee on November 3, 2021, and six months later, on May 11, 2022, through another lawyer, Davor Rukavina (“Rukavina”), in which Rukavina wrote “to provide additional information regarding the systemic abuses of bankruptcy process occasioned during the [Highland] bankruptcy.”<sup>79</sup> Again, the U.S. Trustee’s office took no action.

On February 15, 2023, Dondero filed yet another sworn statement about his alleged conversation with Linn, this time in support of a Verified Rule 202 Petition *filed by HMIT* (“Second Rule 202 Petition”), filed in a different Texas state court (Texas District Court, 191st Judicial District, Dallas County, Texas), following Dondero’s unsuccessful attempts throughout 2021 and 2022 to obtain discovery in the First Rule 202 proceeding and based on the same allegations of misconduct by Seery and Farallon.<sup>80</sup> In this new sworn statement, Dondero describes for the first time the “call” he had with Linn as having been “phone calls” with Patel and Linn and *mentions MGM* and Farallon’s alleged optimism about the *expected sale of MGM*.<sup>81</sup>

In late Spring of 2021, I had phone calls with two principals at Farallon Capital Management, LLC (“Farallon”), Raj Patel and Michael Linn. During these phone calls, Mr. Patel and Mr. Linn informed me that Farallon had a deal in place to purchase the Acis and HarbourVest claims, which I understood to refer to claims that were a part of settlements in the HCM Bankruptcy Proceedings. Mr. Patel and Mr. Linn stated that Farallon agreed to purchase these claims based solely on conversations with Seery because they had made significant profits when Seery told them to purchase other claims in the past. They also stated that they were particularly optimistic because of the expected sale of MGM.

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<sup>78</sup> *Id.*, Ex. A, 6-11.

<sup>79</sup> HMIT Ex. 61.

<sup>80</sup> Highland Ex. 9.

<sup>81</sup> *Id.*, ¶ 4.

The Second Rule 202 Petition was also denied by the second Texas state court on March 8, 2023.<sup>82</sup>

HMIT, in an apparent attempt to provide support for its argument that the Proposed Claims are “colorable,” stated in its Motion for Leave that “[t]he Court also should be aware that the Texas States [sic] Securities Board (“TSSB”) opened an investigation into the subject matter of the insider trades at issue, and this investigation has not been closed. The continuing nature of this investigation underscores HMIT’s position that the claims described in the attached Adversary Proceeding are plausible and certainly far more than merely ‘colorable.’”<sup>83</sup> But, two days before opposition briefing was due, on May 9, 2023, the TSSB issued a letter (“TSSB Letter”) to Highland, informing it that “[t]he staff of the [TSSB] has completed its review of the complaint received by the Staff against [Highland]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.”<sup>84</sup> HMIT’s counsel (frankly, to the astonishment of the court) objected to the admission of the TSSB Letter at the June 8 Hearing “on the grounds of relevance, 403, hearsay, and authenticity . . . [a]nd I also . . . think it's important that the decision by a regulatory body has no bearing on this cause of action or the colorability of this claim, and the Texas State Securities Board will tell you that. This is completely and utterly irrelevant to your inquiry.”<sup>85</sup> The court overruled HMIT’s objection to the relevance of this exhibit—considering, among other things, that HMIT, in its Motion for Leave, specifically mentioned the allegedly open TSSB “investigation” as relevant evidence the court “should be aware” of in making its determination of whether the Proposed Claims were “colorable.”<sup>86</sup>

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<sup>82</sup> Highland Ex. 10.

<sup>83</sup> Motion for Leave, ¶ 37.

<sup>84</sup> See Highland Ex. 33.

<sup>85</sup> June 8 Hearing Transcript, 323:22-324:3.

<sup>86</sup> *Id.*, 324:4-328:2.

*C. Claims Purchasers Purchase Claims and File Notices of Transfers of Claims*

To be clear about the time line here, it was after confirmation of the Plan but prior to the Effective Date of the Plan, that the Claims Purchasers: (1) purchased several large unsecured claims that had been allowed following, and as part of, Rule 9019 settlements, each of which were approved by the bankruptcy court, after notice and hearing, prior to the confirmation hearing; and (2) filed notices of the transfers of those claims pursuant to Rule 3001(e)(2) of the Federal Rules of Bankruptcy Procedure. The noticing of the claims transfers began on April 16, 2021, with the notice of transfer of the claim held by Acis Capital Management to Muck, and ended on August 9, 2021, with the notices of transfers of the claims held by UBS Securities to Muck and Jessup:

<b>Claimant(s)</b>	<b>Date Filed/ Claim No.</b>	<b>Asserted Amount</b>	<b>Claim Settled/Allowed? If so, Amount</b>	<b>Date Filed/ Rule 3001 Notice Dkt. No.</b>
Acis Capital Management LP and Acis Capital Management, GP LLC (together, “Acis”)	12/31/2019 Claim No. 23	\$23,000,000	Yes <sup>87</sup>  \$23,000,000	4/16/2021 Bankr. Dkt. No. 2215 (Muck)
Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”)	4/3/2020 Claim No. 72	\$190,824,557	Yes <sup>88</sup>  \$137,696,610	4/30/2021 Bankr. Dkt. No. 2261 (Jessup)
HarbourVest 2017 Global Fund, LP, HarbourVest 2017 Global AIF, LP, HarbourVest Partners LP, HarbourVest Dover Street IX Investment LP, HV International VIII Secondary LP, HarbourVest Skew Base AIF LP (the “HarbourVest Parties”)	4/8/2020  Claim Nos. 143, 147, 149, 150, 153, 154	Unliquidated	Yes <sup>89</sup>  \$80,000,000 in aggregate (\$45,000,000 General Unsecured Claim, and \$35,000,000 subordinated claim)	4/30/2021 Bankr. Dkt. No. 2263 (Muck)

<sup>87</sup> Bankr. Dkt. No. 1302. The Debtor’s settlement with Acis was approved over the objection of Dondero. Bankr. Dkt. No. 1121.

<sup>88</sup> Bankr. Dkt. No. 1273.

<sup>89</sup> Bankr. Dkt. No. 1788. The Debtor’s settlement with the HarbourVest Parties was approved over the objections of Dondero, Bankr. Dkt. No. 1697, and Dugaboy and the Get Good Trust. Bankr. Dkt. No. 1706.

UBS Securities LLC, UBS AG, London Branch (the “UBS Parties”)	6/26/2020 Claim Nos. 190, 191	\$1,039,957,799.40	Yes <sup>90</sup> \$125,000,000 in aggregate (\$65,000,000 General	8/9/2021 Bankr. Dkt. No. 2698 (Muck) and Bankr. Dkt. No. 2697 (Jessup)
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HMIT insists that it “made no sense” for the Claims Purchasers to buy the Purchased Claims because “the publicly available information [] did not offer a sufficient potential profit to justify the publicly disclosed risk,” and “their investment was projected to yield a small return with virtually no margin for error.”<sup>91</sup> Dondero testified that it was *his* view that there was insufficient information in the public to justify the claims purchases.<sup>92</sup> But, HMIT’s arguments here are contradicted by the information that was publicly available to Farallon and Stonehill at the time of their purchases and by HMIT’s own allegations. In advance of Plan confirmation, Highland projected that Class 8 general unsecured creditors would recover 71.32% on their allowed claims. In the Proposed Complaint, HMIT sets forth the amounts the Claims Purchasers purportedly paid for their claims.<sup>93</sup> Taking into account the face amount of the allowed claims, the Claims Purchasers’ projected profits (in millions of dollars) were as follows:

Creditor	Class 8	Class 9	Ascribed Value <sup>94</sup>	Purchaser	Purchase Price	Projected Profit
Redeemer	\$137.0	\$0.0	\$97.71	Stonehill	\$78.0	\$19.71
Acis	\$23.0	\$0.0	\$16.4	Farallon	\$8.0	\$8.40

<sup>90</sup> Bankr. Dkt. No. 2389. The Debtor’s settlement with the UBS Parties was approved over the objections of Dondero, Dkt. No. 2295, and Dugaboy and the Get Good Trust. Bankr. Dkt. Nos. 2268, 2293.

<sup>91</sup> Proposed Complaint, ¶ 3.

<sup>92</sup> June 8 Hearing Transcript, 187:3-7 (“Q: And it’s your testimony that there wasn’t sufficient information in the public for them to buy – this is your view – that there wasn’t sufficient information in the public to justify their purchases. Is that your view? A: Correct.”).

<sup>93</sup> *Id.*, ¶ 42.

<sup>94</sup> “Ascribed Value” is derived by multiplying the Class 8 amount by the projected recovery of 71.32% for that class.

HarbourVest	\$45.0	\$35.0	\$32.09	Farallon	\$27.0	\$5.09
UBS	\$65.0	\$60.0	\$46.39	Stonehill & Farallon	\$50.0	(\$3.61)

As HMIT acknowledges, by the time Dondero spoke with Farallon in the “late spring” of 2021, the Claims Purchasers had acquired the allowed claims previously held by Acis, Redeemer, and HarbourVest.<sup>95</sup> Based on an aggregate purchase price of \$113 million for these three claims, the Claims Purchasers would have expected to net over \$33 million in profits, or nearly 30% on their investment, had Highland met its projections. The Claims Purchasers would make even more money if Highland beat its projections, because they also purchased the Class 9 claims and would therefore capture any upside. In this context, HMIT’s and Dondero’s assertions that it did not “make any sense” for the Claims Purchasers to purchase their claims when they did does not pass muster—given the publicly available information about potential recoveries under the Plan. Dondero even acknowledged, on cross-examination, that he was prepared to pay **30 percent more** than Farallon had paid, even though he did not think there was sufficient public information available to justify Farallon’s purchase of the claims.<sup>96</sup> Dondero essentially testified that he wanted to purchase Farallon’s claims because he wanted to be in a position of control to force a settlement or resolution of the bankruptcy case, post-confirmation, under terms acceptable to him. He did not want to try to settle by negotiating with Farallon and Stonehill *as creditors*, but instead he wanted to purchase the claims because “if we owned all the claims, it would settle the case.”<sup>97</sup>

<sup>95</sup> See Complaint, ¶ 41 n.12. The UBS claims were not acquired until August 2021, long after the alleged “*quid pro quo*” was supposedly agreed upon and the MGM-Amazon deal was announced in the press in late May 2021. See, Highland Ex. 34, *Amazon’s \$8.45 Billion Deal for MGM is Historic But Feels Mundane* (dated May 26, 2021).

<sup>96</sup> June 8 Hearing Transcript, 187:8-11.

<sup>97</sup> *Id.*, 187:12-189:10.

*D. Fifth Circuit’s Approval of the Gatekeeper Provision in Plan, Recognition of Res Judicata Effect of the Prior Gatekeeper Orders, and the Bankruptcy Court’s Order Approving Highland’s Motion to Conform Plan*

Harkening back to February 22, 2021, after a robust confirmation hearing, this court entered its order confirming the Plan, over the objections of Dondero and Dondero-Related Parties, specifically questioning the good faith of their objections. The court found, after noting “the remoteness of their economic interests” that “[it] has good reason to believe that [the Dondero Parties] are not objecting to protect economic interests they have in the Debtor but to be disruptors. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan.”<sup>94</sup> The Plan became effective on August 11, 2021.

Of relevance to the Motion for Leave, the confirmed Plan included certain exculpations, releases, and injunctions designed to protect the Debtor and other bankruptcy participants from bad-faith litigation. These participants included: Highland’s employees (with certain exceptions); Seery as Highland’s CEO and CRO; Strand (after the appointment of the Independent Directors); the Independent Directors; the successor entities; the CTOB and its members; the Committee and its members; professionals retained in the case; and all “Related Persons.” The injunction provisions contained a Gatekeeper Provision which is similar to the gatekeeper provisions in the prior Gatekeeper Orders in that it provided that the bankruptcy court will act as a “gatekeeper” to screen and prevent bad-faith litigation against the Protected Parties. The Gatekeeper Provision in the Plan states, in pertinent part:<sup>98</sup>

No Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case . . . without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents *a colorable claim of any kind*, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically

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<sup>98</sup> Plan, 50-51 (emphasis added).

authorizing such Enjoined Party to bring such claim or cause of action against such Protected Party.

The Plan defines Protected Parties as,

collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the [CTOB] (in their official capacities), (xiii) [HCMLP GP LLC], (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); [but excluding Dondero and Okada and various entities including HMIT and Dugaboy].

The court notes that the Gatekeeper Provision in the Plan provides protection to a broader number of persons than the persons protected under the January 2020 Order (addressing the Independent Directors and their agents and advisors) and the July 2020 Order (addressing Seery in his role as CEO and CRO of the Debtor). But, at the same time, it is less restrictive than the gatekeeping provisions under the Gatekeeper Orders, in that the gatekeeping provisions in the prior orders shield the protected parties from any claim that is not both “colorable” *and* a claim for “willful misconduct or gross negligence,” effectively providing the protected parties under the prior orders with a limited immunity from claims of simple negligence or breach of contract that do not rise to the level of “willful misconduct or gross negligence,” whereas the Gatekeeping Provision under the Plan does not act as a release or exculpation of the Protected Parties in any way because it does not prohibit any party from bringing *any kind of claim* against a Protected Party, provided the proposed claimant first obtains a finding in the bankruptcy court that its proposed claims are “colorable.”<sup>99</sup>

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<sup>99</sup> It should be noted that--as discussed further below--there are, separately in the Plan, exculpations as to a smaller universe of persons--e.g., the Debtor, the Committee and its members, and the Independent Directors.

Dondero and some of the entities under his control appealed<sup>100</sup> the Confirmation Order directly to the Fifth Circuit, arguing, among other issues, that the Plan’s exculpation, release, and injunction provisions, including the Gatekeeper Provision (collectively, the “Protection Provisions”) impermissibly provide certain non-debtor bankruptcy participants with a discharge, purportedly in contravention of the provisions of Bankruptcy Code § 524(e)’s statutory bar on non-debtor discharges. As noted above, the Fifth Circuit, “affirm[ed] the confirmation order in large part” and “reverse[d] *only insofar as the plan exculpates* certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties *from the plan’s exculpation*, and affirm[ed] on all remaining grounds.”<sup>101</sup> The Fifth Circuit specifically found the “injunction and gatekeeping provisions [to be] sound” and found that it was only “the *exculpation* of certain non-debtors” that “exceed[ed] the bankruptcy court’s authority,” agreeing with the bankruptcy court’s conclusions that the Protection Provisions were legal, necessary under the circumstances, and in the best interest of all parties” in part, and only disagreeing to the extent that the *exculpation* provision improperly extended to certain bankruptcy participants other than Highland, the Committee and its members, and the Independent Directors and “revers[ing] and strik[ing] the few unlawful parts

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<sup>100</sup> On appeal, the appellant funds (“Funds”), whom this court found to be “owned and/or controlled” by Dondero despite their purported independence, also asked the Fifth Circuit to vacate this court’s factual finding “because it threatens the Funds’ compliance with federal law and damages their reputations and values” and because “[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him.” *NexPoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th at 434. Applying the “clear error” standard of review, the Fifth Circuit “le[ft] the bankruptcy court’s factual finding undisturbed” because “nothing in this record leaves us with a firm and definite conviction that the bankruptcy court made a mistake in finding that the Funds are ‘owned and/or controlled by [Dondero].’” *Id.* at 434-35.

<sup>101</sup> See *supra* note 4. The Fifth Circuit replaced its initial opinion with its final opinion a few days after certain appellants had filed a short (four-and-one-half pages) motion for rehearing (the “Motion for Rehearing”) on September 2, 2022. The movants had asked the Fifth Circuit to “narrowly amend the [initial] Opinion in order to confirm the Court’s holding that the impermissibly exculpated parties are similarly struck from the protections of the injunction and gatekeeper provisions of the plan (in other words, that such parties cannot constitute ‘Protected Parties’).” In the final Fifth Circuit opinion, same as the initial Fifth Circuit opinion, the Fifth Circuit stated that, with regard to the Confirmation Order, the panel would “reverse only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strike those few parties from the plan’s exculpation, and affirm on all remaining grounds.” *Highland Capital*, 48 F.4th at 424. No findings, discussion, or rulings regarding the injunction and gatekeeper provisions that were in the initial Fifth Circuit opinion were disturbed.

of the Plan’s *exculpation provision*.<sup>102</sup> The Fifth Circuit then remanded to the Bankruptcy Court “for further proceedings in accordance with the opinion.”<sup>103</sup>

In the course of analyzing the Protection Provisions under the Plan, the Fifth Circuit noted that the protection provisions in the January and July 2020 Orders appointing the Independent Directors and Seery as CEO and CRO of Highland were *res judicata* and that “those orders have the effect of exculpating the Independent Directors and Seery in his executive capacities” such that “[d]espite removal from the exculpation provision in the confirmation order, the Independent Directors’ agents, advisors, and employees, as well as Seery in his official capacities are all exculpated to the extent provided in the January and July 2020 Orders.”<sup>104</sup>

The Reorganized Debtor filed a motion in the bankruptcy court to conform the plan to the Fifth Circuit’s mandate, proposing that only one change was needed to make the Plan compliant with the Fifth Circuit’s ruling: narrow the defined term for “Exculpated Parties” to read as follows:

“Exculpated Parties” means, collectively, (i) the Debtor, (ii) the Independent Directors, (iii) the Committee, and (iv) members of the Committee (in their official capacities).

The Reorganized Debtor proposed that this one simple revision of this defined term removed the exculpations deemed by the Fifth Circuit to violate section 524(e) of the Bankruptcy Code, and that no other changes would be required to conform the Plan and Confirmation Order to the Fifth Circuit’s mandate. Some of the Dondero-related entities objected to the motion to conform, arguing that the Fifth Circuit’s ruling required more surgery on the Plan than simply narrowing the defined term “Exculpated Parties.” On February 27, 2023, this court entered its order granting

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<sup>102</sup> *Id.* at 435.

<sup>103</sup> *Id.* at 440. The Fifth Circuit’s docket reflects that it issued its Judgment and mandate on September 12, 2022.

<sup>104</sup> *Highland Capital*, 48 F.4th at 438 n.15. The Fifth Circuit stated, “To the extent Appellants seek to roll back the protections in the bankruptcy court’s January 2020 and July 2020 orders (which is not clear from their briefing), such a collateral attack is precluded.” *Id.*

Highland’s motion to conform the Plan, ordering that one change be made to the Plan – revising the definition of “Exculpated Parties” – and no more.<sup>105</sup> The objecting parties’ direct appeal of this order has been certified to the Fifth Circuit and is one of the numerous currently active appeals by Dondero-related parties pending in the Fifth Circuit.

*E. HMIT’s Motion for Leave*

HMIT filed its emergency Motion for Leave on March 28, 2023, which, with attachments, as first filed, was 387 pages in length, including an initial proposed complaint (“Initial Proposed Complaint”) and two sworn declarations of Dondero that were attached as “objective evidence” in “support[ ]” of the Motion for Leave,<sup>106</sup> and with it, an application for an emergency setting on the hearing on the Motion to Leave. On April 23, 2023, HMIT filed a pleading entitled a “supplement” to its Motion to Leave (“Supplement”),<sup>107</sup> to which it attached a revised proposed verified complaint (“Proposed Complaint”)<sup>108</sup> as Exhibit 1-A to the Motion for Leave and stated that “[t]he Supplement is not intended to amend or supersede the [Motion for Leave]; rather, it is intended as a supplement to address procedural matters and to bring forth additional facts that further confirm the appropriateness of the derivative action.”<sup>109</sup> The HMIT Motion for Leave was later amended to eliminate the Dondero Declarations and references to the same (but not the underlying allegations that were supposedly supported by the Dondero Declarations).<sup>110</sup>

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<sup>105</sup> Bankr. Dkt. No. 3672.

<sup>106</sup> Bankr. Dkt. No. 3699.

<sup>107</sup> Bankr. Dkt. No. 3760.

<sup>108</sup> See *supra* note 5.

<sup>109</sup> Supplement ¶ 1.

<sup>110</sup> Bankr. Dkt. Nos. 3815 and 3816. Both of these filings had the Initial Proposed Complaint attached as Exhibit 1 to the Motion for Leave.

As earlier noted, HMIT desires leave to sue the Proposed Defendants regarding *the post-confirmation, pre-Effective Date purchase of allowed unsecured claims*. The Proposed Defendants would be:

**Seery**, who was a stranger to Highland until approximately four months following the Petition Date when he was brought in as one of the three Independent Directors, and now serves as the CEO of the Reorganized Debtor and the Trustee of the Claimant Trust (and also was previously Highland’s CRO during the case, then CEO, and, also, an Independent Board Member of Highland’s general partner during the Highland case). Seery is best understood as the man who took Dondero’s place running Highland—per the request of the Committee.

**Claims Purchasers**, who were strangers to Highland until the end of the bankruptcy case. They are identified as Farallon Capital Management, LLC (“Farallon”); Muck Holdings, LLC (“Muck”), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC (“Stonehill”); and Jessup Holdings, LLC (“Jessup”), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the “Claims Purchasers”). The Claims Purchasers purchased \$240 million face value of already-allowed unsecured claims post-confirmation and pre-Effective Date in the spring of 2021 and another \$125 million face value of already-allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk’s docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Committee during the Highland bankruptcy case).

**John Doe Defendants Nos. 1-10**, which are described to be “currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.”

**Highland**, as a nominal defendant. HMIT added Highland as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

**Claimant Trust**, as a nominal defendant. HMIT added the Claimant Trust as a nominal defendant in the Revised Proposed Complaint attached to the Supplement.

The proposed plaintiffs would be:

**HMIT**, which, again, was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited partnership interests). HMIT is the holder of a Class 10 interest under the Plan, pursuant to which HMIT’s limited partnership interest in Highland was extinguished as of the Effective Date in exchange for a pro rata share of a contingent interest in the Claimant Trust.

**Highland**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

**Claimant Trust**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Claimant Trust.

In the Proposed Complaint, HMIT asserts the following six counts: Count I (against Seery) for breach of fiduciary duties; Count II (against the Claims Purchasers and John Doe Defendants) for knowing participation in breach of fiduciary duties; Count III (against all Proposed Defendants) for conspiracy; Count IV (against Muck and Jessup) for equitable disallowance of their claims; Count V (against all Proposed Defendants) for unjust enrichment and constructive trust; and Count VI (against all Proposed Defendants) for declaratory relief.<sup>111</sup> The gist of the Proposed Complaint is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that “wrongful conduct occurred” and “improper trades” were made.<sup>112</sup> HMIT believes the Claims Purchasers paid around \$160 million for the \$365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland’s Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. And, of course, Dondero purports to have concluded from the three phone conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Seery must have given these Claims Purchasers MNPI regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Seery must have shared

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<sup>111</sup> In the Initial Proposed Complaint, HMIT proposed to bring claims against the various Proposed Defendants in seven counts, including a count for fraud by misrepresentation and material nondisclosure against all Proposed Defendants. In the Proposed Complaint, HMIT abandons its claim for fraud by misrepresentation and material nondisclosure.

<sup>112</sup> Motion for Leave, 7.

MNPI regarding the likely imminent sale of MGM, in which Highland had, directly and indirectly, substantial holdings. As noted earlier, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in media reports for several months and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months *before* certain of their claims—the UBS claims—were purchased).<sup>113</sup> In summary, while the Proposed Complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor’s estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Seery, and are now happily approving Seery’s allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages in the form of equitable disallowance of the Claims Purchasers’ claims and disgorgement of distributions on account of those claims, the imposition of a constructive trust over all disgorged funds, and declaratory relief.

HMIT claims that, in seeking to file the Proposed Complaint, it is seeking to protect the rights and interests of the Reorganized Debtor, the Claimant Trust, and “innocent stakeholders” who were allegedly injured by Seery’s and the Claims Purchasers’ alleged conspiratorial and

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<sup>113</sup> The MGM-Amazon deal was ultimately consummated in March 2022 for approximately \$6.1 billion, net of cash acquired, plus approximately \$2.5 billion in debt that Amazon assumed and immediately repaid. Credible testimony from Seery at the June 8 Hearing revealed that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public).

fraudulent scheme to line Seery’s pockets with excessive compensation for his role as Claimant Trustee. In its Motion for Leave, HMIT states that “[t]he attached Adversary Proceeding alleges claims which are substantially more than ‘colorable’ based upon plausible allegations that the Proposed Defendants, acting in concert, perpetrated a fraud, including a fraud upon innocent stakeholders, as well as breaches of fiduciary duties and knowing participation in (or aiding or abetting) breaches of fiduciary duty.”<sup>114</sup>

*F. Is HMIT Really Dondero by Another Name?*

The Proposed Defendants argue that HMIT’s Motion for Leave is nothing more than a continuation of the harassing and bad-faith litigation by Dondero and his related entities that the Gatekeeper Provisions were intended to prevent and, thus, this is one of multiple reasons that the Motion for Leave should be denied.

To be clear, HMIT asserts that it is controlled by Mark Patrick (“Patrick”), who has been HMIT’s administrator since August 2022. Patrick asserts that he is not influenced or controlled by Dondero, in general, and specifically not in its efforts to pursue the Proposed Claims against Seery and the Claims Purchasers. However, the testimony elicited at the June 8 Hearing—the hearing at which HMIT had the burden of showing the court that its Proposed Claims were “colorable” such that it should be allowed to pursue them through the filing of the Proposed Complaint—paints a different picture. Somewhat tellingly, HMIT chose not to call Patrick—allegedly HMIT’s only representative and control person—as a witness in support of its Motion for Leave. Rather, Dondero was HMIT’s first witness called in support of its motion, and the first

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<sup>114</sup> See Motion for Leave (Bankr. Dkt. No. 3816) ¶ 3. HMIT notes, in a footnote 6, that “Neither this Motion nor the proposed Adversary Complaint seeks to challenge the Court’s Orders or the Plan. In addition, neither this Motion nor the proposed Adversary Complaint seeks to redistribute the assets of the Claimant Trust in a manner that would adversely impact innocent creditors. Rather, the proposed Adversary Proceeding seeks to benefit all innocent stakeholders while working within the terms and provisions of the Plan, as well as the Claimant Trust Agreement.”

questions on direct from HMIT's counsel were aimed at establishing that Dondero was not behind the filing of the Motion for Leave and the pursuit of the Proposed Claims.<sup>115</sup> Dondero testified that he did not (i) "have any current official position" with HMIT, (ii) "attempt to exercise [control] on the business affairs of [HMIT]," (iii) "have any official legal relationship with [HMIT] where [he] can attempt to exercise either direct or indirect control over [HMIT]," or (iv) "participate in the decision of whether or not to file the proceedings that are currently pending before Judge Jernigan."<sup>116</sup> After HMIT rested, Highland and the Claimant Trust called Patrick as a witness, and he testified that he was the administrator of HMIT, that HMIT does not have any employees, operations, or revenues, and, when asked if HMIT owned any assets, Patrick testified, with not a great deal of certainty, that "it's my understanding it has a contingent beneficiary interest in the Claimants [sic] Trust" and that is the only asset HMIT has.<sup>117</sup> Patrick testified that HMIT did not owe any money to Dondero personally, but acknowledged that in 2015, HMIT had issued a secured promissory note in favor of Dondero's family trust, Dugaboy, in the amount of approximately \$62.6 million (the "Dugaboy Note") in exchange for Dugaboy transferring a portion of its limited partner interests in Highland to HMIT; the Dugaboy Note was secured in part by the Highland limited partnership interests purchased from Dugaboy.<sup>118</sup> Patrick admitted that, if HMIT's Class 10 interest has no value, HMIT would have no ability to pay the Dugaboy Note.<sup>119</sup> He further testified that neither he nor any representative of HMIT had ever spoken with any representative of Farallon or Stonehill, that he had no personal knowledge about any *quid pro quo*, the amount of due diligence Farallon or Stonehill conducted prior to buying their claims, or the terms of

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<sup>115</sup> See June 8 Hearing Transcript, 113:10-25.

<sup>116</sup> *Id.*

<sup>117</sup> June 8 Hearing Transcript, 307:7-308:2.

<sup>118</sup> *Id.*, 303:11-305:1; Highland Ex. 51, HMIT's \$62,657,647.27 *Secured Promissory Note* dated December 24, 2015, in favor of Dugaboy.

<sup>119</sup> *Id.*, 308:3-16.

Seery’s compensation package (until the terms were disclosed to them in opposition to the Motion for Leave).<sup>120</sup> Patrick admitted that Dugaboy was paying HMIT’s attorneys’ fees pursuant to a settlement agreement between HMIT and Dugaboy.<sup>121</sup>

On cross-examination by HMIT’s counsel, Patrick further testified that HMIT has not filed any litigation, as plaintiff, other than its efforts to be a plaintiff in the Motion for Leave and its action as a petitioner in the Texas Rule 202 proceeding filed earlier in 2023 in the Texas state court.<sup>122</sup> HMIT’s counsel argued that the point of this questioning was that “they’re just trying to draw Dondero into this and – this vexatious litigant argument, and we’re just developing the fact that obviously Hunter Mountain has only filed – attempting to file this action and a Rule 202 proceeding.<sup>123</sup> But, Dondero and HMIT’s counsel referred during the June 8 Hearing to the First Rule 202 Petition (where Dondero was the petitioner) and the Second Rule 202 Petition (where HMIT was the petitioner) as “our” Rule 202 petitions, and also to the numerous attempts at getting the discovery (that Dondero had warned Linn was coming) in the collective. For example, in objecting to the admission of Highland’s Exhibit 10 – the Texas state court order denying and dismissing the Second Rule 202 Petition – on the basis of relevance, HMIT’s counsel referred to the order as “an order denying *our second*” Rule 202 Petition.<sup>124</sup> And, Dondero testified that his warning to Linn in May 2021 that “discovery was coming” was “my response to I knew they had traded on material nonpublic information” and that “I thought it would be a lot easier to get

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<sup>120</sup> *Id.*, 308:18-312:12. This testimony from Patrick came after HMIT’s counsel objection to counsel’s line of questioning regarding Patrick’s personal knowledge of the facts supporting the allegations in the Proposed Complaint on the basis that he was invading the attorney work product privilege, which was overruled by this court; HMIT’s counsel argued (311:4-19) that the line of questioning was an “invasion of attorney work product . . . [b]ecause they might – he would have knowledge from the efforts and investigation through attorneys in the case.”

<sup>121</sup> *Id.*, 312:24-313:18.

<sup>122</sup> *Id.*, 315:3-9.

<sup>123</sup> *Id.*, 316:6-11.

<sup>124</sup> *Id.*, 58:11-13. The court overruled HMIT’s relevance objection and admitted Highland’s Exhibit 10 into evidence. *Id.*, 58:14-15.

discovery on a situation like this than it has been for the last two years” and that “*we’ve* been trying for two years to get . . . discovery.”<sup>125</sup>

Dondero’s use of an entity over which he exerts influence and control to pursue his own agenda in the bankruptcy case is not new. Rather, this has been part of Dondero’s *modus operandi* since the “nasty breakup” between Dondero and Highland that culminated with Dondero’s ouster in October 2020, whereby Dondero, after not getting his way in the bankruptcy court, continued to lob objections and create obstacles to Highland’s implementation of the Plan through entities he owns or controls. As noted above, the Fifth Circuit specifically upheld this court’s finding in the Confirmation Order that Dondero owned or controlled the various entities that had objected to confirmation of the Plan and appealed the Confirmation Order, where the Dondero-related appellants made similar protestations that they are not owned or controlled by Dondero and asked the Fifth Circuit to vacate this court’s factual finding because, among other reasons, “[a]ccording to the Funds, the characterization is unfair, as *they* are not litigious like Dondero and are completely independent from him.”<sup>126</sup> Based on the totality of the evidence in this proceeding, the court finds that, contrary to the protestations of HMIT’s counsel and Patrick otherwise, Dondero is the driving force behind HMIT’s Motion for Leave and the Proposed Complaint. The Motion for Leave is just one more attempt by Dondero to press his conspiracy theory that he has pressed for over two years now, unsuccessfully, in Texas state court through Rule 202 proceedings, with the Texas State Securities Board, and with the United States Trustee’s office.

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<sup>125</sup> *Id.*, 191:5-25.

<sup>126</sup> *Highland Capital*, 48 F.4th at 434-435.

*G. Opposition to Motion for Leave: Arguing No Standing and No “Colorable” Claims*

Highland, the Claimant Trust, and Seery (together, the “Highland Parties”) filed a joint opposition (“Joint Opposition”) to HMIT’s Motion for Leave on May 11, 2023.<sup>127</sup> The Claims Purchasers filed a separate objection (“Claims Purchasers’ Objection”) to the Motion for Leave on May 11, 2023, as well.<sup>128</sup> In the Joint Opposition, the Highland Parties urge the court to deny HMIT leave to pursue the Proposed Claims because, as a threshold matter, HMIT does not have standing to bring them, directly or derivatively against the Proposed Defendants. They argue, in the alternative, that the Motion for Leave should be denied even if HMIT had standing to pursue the Proposed Claims because none of the Proposed Claims are “colorable” claims as that term is used in the Gatekeeper Provision of the Plan (and Gatekeeper Orders).<sup>129</sup>

The Claims Purchasers likewise argue that HMIT lacks standing to complain about claims trading in the bankruptcy which occurred between sophisticated Claims Purchasers and sophisticated sellers (“Claims Sellers”), represented by skilled bankruptcy and transactional counsel. Moreover, they argue HMIT cannot show that it or the Reorganized Debtor or the Claimant Trust were injured by the claims trading at issue because the Purchased Claims had already been adjudicated as allowed claims in the bankruptcy case—thus, distributions under the Plan on account of the Purchased Claims remain the same, the only difference being who holds the claims. Moreover, even if HMIT could succeed in equitably subordinating the validly transferred *allowed* claims, HMIT would still be in the same position it is today: the holder of a

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<sup>127</sup> Bankr. Dkt. Nos. 3783. Highland, the Claimant Trust, and Seery also filed on May 11 a *Declaration of John A. Morris in Support of Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.’s Joint Opposition to Hunter Mountain Investment Trust’s Motion for Leave to File Verified Adversary Proceeding* (“Morris Declaration”) that attached 44 Exhibits in support of the Joint Opposition. Bankr. Dkt. No. 3784.

<sup>128</sup> Bankr. Dkt. No. 3780.

<sup>129</sup> See Joint Opposition ¶ 139 (“Because HMIT lacks standing, this Court need not reach the merits of HMIT’s proposed Adversary Complaint. As a matter of judicial economy, however, the Highland Parties respectfully request that this Court address the lack of merit as an alternative basis to deny the Motion.”).

contingent, speculative Class 10 interest that would only be paid after payment, in full, with interest, of all creditors under the Plan. The Claims Purchasers argue in the alternative that the Proposed Claims are not “colorable.”

Finally, the Proposed Defendants argue that the standard of review for assessing whether the Proposed Claims are “colorable” (as such term is used in the Gatekeeper Provision and Gatekeeping Orders) is a standard that is a higher than the “plausibility” standard applied to Rule 12(b)(6). They argue that HMIT should be required to meet a higher bar with respect to colorability that includes making a *prima facie* showing that the Proposed Claims have merit (and/or are not without foundation) which requires HMIT to do more than meet the liberal notice-pleading standards.

*H. HMIT’s Reply to the Proposed Defendants’ Opposition to the Motion for Leave*

In its reply brief (“Reply”), filed by HMIT on May 18, 2023,<sup>130</sup> it argues that it has constitutional standing as an “aggrieved party” to bring the Proposed Claims on behalf of itself.<sup>131</sup> HMIT also argues that it has standing under Delaware Trust law to bring a derivative action on behalf of the Claimant Trust and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to bring the claims.<sup>132</sup> Finally, HMIT maintains that the standard of review that the bankruptcy court should apply in assessing the “colorability” of the Proposed Claims is no greater than the standard of review applied to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), which would require the bankruptcy court to look only to the “four corners” of the Proposed Complaint

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<sup>130</sup> Bankr. Dkt. No. 3785.

<sup>131</sup> See Reply ¶ 7.

<sup>132</sup> See, Reply ¶ 23 n.5, where HMIT argues “The nature of this injury, in addition to Seery’s influence over the Claimant Trust, and the lack of prior action by the Claimant Trust to pursue the claims HMIT seeks to pursue derivatively, among other things, demonstrate that HMIT is not only a proper party to assert its derivative claims – but the best party to do so.”

and “not weigh extraneous evidence,”<sup>133</sup> take all allegations as true, and view all allegations and inferences in a light most favorable to HMIT. As discussed in greater length below, HMIT argues that, under this standard, the bankruptcy court should not consider evidence in making its determination as to whether the Proposed Complaint presents “colorable” claims.

*I. Litigation within the Litigation: The Pre- June 8 Hearing Skirmishes*

Suffice it to say there was significant activity before the Motion for Leave actually was presented at the June 8 hearing. HMIT sought an emergency hearing on its Motion for Leave (wanting a hearing on three days’ notice). When the bankruptcy court denied an emergency hearing, HMIT unsuccessfully pursued an interlocutory appeal of the denial of an emergency hearing to the district court. HMIT then petitioned for a writ of mandamus at the Fifth Circuit regarding the emergency hearing denial, which was denied by the Fifth Circuit on April 12, 2023.

Next, there were multiple pleadings and hearings regarding *what kind of hearing* the bankruptcy court should or should not hold on the Motion for Leave—particularly focusing on whether or not it would be an evidentiary hearing.<sup>134</sup> The resolution of this issue turned on what standard of review the court should apply in exercising its gatekeeping function and determining the colorability of the Proposed Claims. HMIT (although it had submitted two declarations of Dondero with its original Motion for Leave and approximately 350 pages of total evidentiary support) was adamant that there should be no evidence presented at the hearing on the Motion for Leave, arguing that the standard for review should be the plausibility standard under Rule 12(b)(6)

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<sup>133</sup> See Reply ¶ 47.

<sup>134</sup> Highland, joined by Seery and the Claims Purchasers, had filed a motion asking the bankruptcy court to set a briefing schedule on the Motion for Leave and to schedule a status conference, indicating that Highland’s proposed timetable for same was opposed by HMIT. HMIT subsequently filed a response unopposed to a briefing schedule and status conference, but, before the status conference, HMIT filed a brief, stating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the bankruptcy court did not need evidence to exercise its gatekeeping function and determine if HMIT has a “colorable” claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

motions to dismiss such that “the threshold inquiry is very, very low. Evidence is not allowed. . . . [S]imilar to a 12(b)(6) inquiry, [the court] is limited to the four corners of the principal pleading – in this case, the complaint, or now the revised complaint.”<sup>135</sup> Counsel for the Proposed Defendants argued that the standard of review for colorability here, in the specific context of the court exercising its gatekeeping function under the Plan, is more akin to the standards applied under the Supreme Court’s *Barton Doctrine*<sup>136</sup> pursuant to which that the bankruptcy court must apply a higher standard than the 12(b)(6) standard, including the consideration of evidence at the hearing on the motion for leave; if the standard of review presents no greater hurdle to the movant than the 12(b)(6) standard applied to every plaintiff in every case, then the gatekeeping provisions mean nothing and do nothing to protect the parties from the harassing, bad-faith litigation they were put in place to prevent.<sup>137</sup> On May 22, 2023, after receipt of post-hearing briefing on the issue, the court entered an order stating that “the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave” and “[t]herefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing [on the Motion to Leave] if they so choose.”

Two days later, HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing, seeking expedited depositions of corporate

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<sup>135</sup> Transcript of April 24, 2023 Status Conference, Bankr. Dkt. No. 3765 (“April 24 Transcript”), 14:6-11.

<sup>136</sup> The *Barton Doctrine* was established in the 19th century Supreme Court case of *Barton v. Barbour*, 104 U.S. 126 (1881), and states that a party wishing to sue a court-appointed trustee or receiver must first obtain leave of the appointing court by making a *prima facie* case that the claim it wishes to bring is not without foundation.

<sup>137</sup> See April 24 Transcript, 36:24-37:4 (“[W]e’re exactly today where the Court had predicted in entering [the Confirmation Order], that the costs and distraction of this litigation are substantial. And if all we’re doing is replicating a 12(b)(6) hearing on a motion for leave, we’re actually not doing anything to reduce, as the Court made clear, the burdens, distractions, of litigation.”); 37:5-13 (“The Fifth Circuit likewise cited *Barton* in its order affirming the confirmation order. Specifically, it also explained that the provisions, these gatekeeper provisions requiring advance approval were meant to ‘screen and prevent bad-faith litigation.’ Well that – if that means only what the Plaintiff[ ] say[s] it does, then it really doesn’t do anything at all to screen. There’s no gatekeeping because their version of what that means is always policed under 12(b)(6) standards.”).

representatives of the Claims Purchasers and of Seery and production of documents pursuant to deposition notices and subpoenas duces tecum that HMIT had attached to the motion. On May 26, 2023, this court held yet another status conference. Following the status conference, the court granted in part and denied in part HMIT’s request for expedited discovery by ordering only Seery and Dondero to be made available for depositions prior to the June 8 Hearing. The court reached what seemed like appropriate middle ground by allowing the deposition of Seery and allowing the other parties to depose Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Dondero had been seeking discovery relating to the very claims trades that are the subject of the Revised Proposed Complaint from the Claims Purchasers in Texas state court “Rule 202” proceedings for approximately two years, where their attempts were rebuffed.

Approximately 60 hours before the June 8 Hearing, HMIT filed its Witness and Exhibit List disclosing for the first time two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony). Highland, the Claimant Trust, and Seery filed a joint motion to exclude the expert testimony and documents (“Motion to Exclude”), which the court ultimately granted in a separate order.

During the full-day June 8 Hearing on the Motion to Leave, the court admitted over 50 HMIT exhibits and over 30 Highland/Claimant Trust exhibits. The court heard testimony from HMIT’s witnesses Dondero and Seery (as an adverse witness) and from the Highland Parties’ witness Mark Patrick, the administrator of HMIT since August 2022 (as an adverse witness). The bankruptcy court allowed HMIT to make a running objection to all evidence—as it continued to argue that evidence was not appropriate.

### III. LEGAL ANALYSIS

In determining whether HMIT should be granted leave, pursuant to the Gatekeeper Provision of the Plan and the court's prior Gatekeeper Orders, to pursue the Proposed Claims, the court must address the issue of whether HMIT would have *standing* to bring the Proposed Claims in the first instance. If so, the next question is whether the Proposed Claims are "*colorable*." But prior to getting into the weeds on *standing* and "*colorability*," some general discussion regarding the topic of claims trading in the bankruptcy world seems appropriate, given that HMIT's Proposed Claims are based, in large part, on allegations of *improper* claims trading.

#### A. *Claims Trading in the Context of Bankruptcy Cases—Can It Be Tortious or Otherwise Actionable?*

As noted, at the crux of HMIT's desired lawsuit is what this court will refer to as "claims trading activity" that occurred shortly after the Plan was confirmed, but before the Plan went effective. HMIT believes that the claims trading activity gave rise to various torts: breach of fiduciary duty on the part of Seery; knowing participation in breach of fiduciary duty by the other Proposed Defendants; and conspiracy by all Defendants. HMIT also believes that the following remedies should be imposed: equitable disallowance of the Purchased Claims; disgorgement of the alleged profits the Claims Purchasers made on their purchases; and disgorgement of all Seery's compensation received since the beginning of his "collusion" with the other Defendants. Without a doubt, the Motion for Leave and Proposed Complaint revolve almost entirely around the claims trading activity.

This begs the question: *When (or under what circumstances) might claims trading activity during a bankruptcy case give rise to a cause of action that either the bankruptcy estate or an economic stakeholder in the case might have standing to bring?* Here, the claims trading

wasn't even "during a bankruptcy case" really—it was post-confirmation and pre-effective date, and it happened to be: (a) after mediation of the claims, (b) after Rule 9019 settlement motions, (c) after objections by Dondero and certain of his family trusts were lodged, (d) after evidentiary hearings, and (e) after orders were ultimately entered *allowing* the claims (and in most cases, such orders were appealed). The further crux of HMIT's desired lawsuit is that Seery allegedly "wrongfully facilitated and promoted the sale of large unsecured creditor claims to his close business allies and friends" by sharing *material non-public information* to them regarding the potential value of the claims (i.e., the potential value of the bankruptcy estate), and this is what made the claims trading activity particularly pernicious. The alleged sharing of MNPI allegedly caused the Claims Purchasers to purchase their claims without doing any due diligence and with knowledge that the claims would be worth much more than the Plan's "pessimistic" projections might have suggested, and also allowed Seery to plant friendly allies into the creditor constituency (and on the post-confirmation CTOB) that would "rubber stamp" his generous compensation. This is all referred to as "not arm's-length" and "collusive." Notably, the MNPI mostly pertained to a likely future acquisition of MGM by Amazon (which transaction, indeed, occurred in 2022, after being publicly announced in Spring of 2021); as noted earlier, Highland owned, directly and indirectly, common stock in MGM. Also notably, there had been rumors and media attention regarding a potential sale of MGM for many months.<sup>138</sup> In summary, to be clear, HMIT's desired lawsuit is laced with a theme of "insider trading"—although this isn't a situation of securities trading *per se* (i.e., the unsecured Purchased Claims were not securities), and, as noted earlier, the Texas State Securities Board has not seen fit to investigate the claims trading activity.

So, preliminarily, is claims trading in bankruptcy sinister *per se*? The answer is no.

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<sup>138</sup> E.g., Benjamin Mullin, *MGM Holdings, Studio Behind 'James Bond,' Explores a Sale*, THE WALL STREET JOURNAL (Dec. 21, 2020, 6:38 p.m.).

The activity of investing in distressed debt (which frequently occurs during a bankruptcy case—sometimes referred to as “claims trading”) is ubiquitous and, indeed, has been so for a very long time. As noted by one scholar:

The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code’s enactment in 1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

Adam J. Levitin, *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010) (hereinafter “*Bankruptcy Markets*”).<sup>139</sup>

As a pure policy matter, some practitioners have bemoaned this claims trading phenomenon, suggesting that “distressed debt traders may sacrifice the long-term viability of a debtor for the ability to realize substantial and quick returns on their investments.”<sup>140</sup> Others suggest that claims trading in bankruptcy is beneficial, in that it allows creditors of a debtor an early exit from a potentially long bankruptcy case, enabling them to save expense and administrative hassles, realize immediate liquidity on their claims (albeit discounted), and may

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<sup>139</sup> See also Aaron Hammer & Michael Brandess, *Claims Trading: The Wild West of Chapter 11s*, AM. BANKR. INST. JOURNAL 62 (Jul./Aug. 2010); Chaim Fortgang & Thomas Mayer, *Trading Claims and Taking Control of Corporations in Chapter 11*, 12 CARDOZO L. REV. 1, 25 (1990) (noting that “the first recorded instance of American fiduciaries trading claims against insolvent debtors predates all federal bankruptcy laws and goes back to 1790” when the original 13 colonies were insolvent, owing tremendous amounts of debt to various parties in connection with the Revolutionary War; early American investors purchased these debts for approximately 25% of their par value, hoping the claims would be paid at face value by the American government).

<sup>140</sup> Harvey R. Miller, *Chapter 11 Reorganization Cases and the Delaware Myth*, 55 VAND. L. REV. 1987, 2016 (2002). See also Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain a Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153 (2004); Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129 (2005).

even permit them to take advantage of a tax loss on their own desired timetable.<sup>141</sup> On the flipside, “[c]aims trading permits an entrance to the bankruptcy process for those investors who want to take the time and effort to monitor the debtor and contribute expertise to the reorganization process.”<sup>142</sup>

So, what are the “rules of the road” here? What does the Bankruptcy Code dictate regarding claims trading? The answer is nothing. The Bankruptcy Code itself has no provisions whatsoever regarding claims trading. The only thing resembling any regulation of claims trading during a bankruptcy case is found at Federal Rule of Bankruptcy Procedure 3001(e)—the current version of which went into effect in 1991—and it imposes extremely light regulation—if it could even be called that. This rule requires, in pertinent part (at subsection (2)), that “[i]f a claim other than one based on a publicly traded note, bond, or debenture” is traded during the case after a proof of claim is filed, notice/evidence of that trade must be filed with the bankruptcy clerk by the transferee. The transferor shall then be notified and given 21 days to object. If there is an objection, the bankruptcy court will hold a hearing regarding whether a transfer, in fact, took place. If there is no objection, nothing further needs to happen, and the transferee will be considered substituted for the transferor.

There are several things noteworthy about Rule 3001(e)(2). First, the only party given the opportunity to object is the *transferor* of the claim (presumably, in the situation of a dispute regarding whether there was truly an agreement regarding the transfer of the claim). Second, there is no need for a bankruptcy court order approving the transfer (except in the event of an objection

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<sup>141</sup>See *Bankruptcy Markets*, at 70. See also *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (“Claims trading allows creditors to opt out of the bankruptcy system, trading an uncertain future payment for an immediate one, so long as they can find a purchaser.”).

<sup>142</sup> *Bankruptcy Markets* at 70 (citing, among other authorities, Edith S. Hotchkiss & Robert M. Mooradian, *Vulture Investors and the Market for Control of Distressed Firms*, 43 J. FIN. ECON. 401, 401 (1997) (finding that “vulture investors add value by disciplining managers of distressed firms”).

by the alleged transferor). Third, the *economic consideration paid need not be disclosed to the court or anyone*. Fourth, there is no requirement or definition of timeliness. Finally, it explicitly does not apply with regard to publicly traded debt. This, alone, means that many claims trades are not even reported in a bankruptcy case. But it is not just publicly traded debt that will not be reflected with a Rule 3001(e) filing. For example, bank debt, in modern times, is often syndicated (i.e., fragmented into many beneficial holders of portions of the debt) and only the administrative agent for the syndicate (or the “lead bank”) will file a proof of claim in the bankruptcy—thus, as the syndicated interests (participations) change hands, and they frequently do, there typically will not be a Rule 3001(e) notice filed.<sup>143</sup> To be clear here, this syndication-of-bank-debt fact, along with the fact that there are financial products whereby bank debt might be carved up into economic interests separate and apart from legal title to the loan, means there are many situations in which trading of claims during a bankruptcy case is not necessarily transparent or, for that matter, policed by the bankruptcy court. This is the world of modern bankruptcy. Most of the claims trading that gets reported through a Rule 3001(e) notice is the trading of small vendor claims. And this is all regarded as private sale transactions for the most part.<sup>144</sup>

Suffice it to say that there is not a wealth of case law dealing with claims trading in a bankruptcy context. Perhaps this is not surprising, since it is not prohibited and *is mostly a matter of private contract between buyer and seller*. The case law that does exist seems to arise in situations of perceived bad faith of a purchaser—for example, when there was an attempt to control voting and/or ultimate control of the debtor through the plan process (not always problematic, but

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<sup>143</sup> Anne Marrs Huber & Thomas H. Young, *The Trading of Bank Debt in and Out of Chapter 11*, 15 J. BANKR. L. & PRAC. 1, 1, 3 (2006).

<sup>144</sup> Note that Bankruptcy Rule 3001(e) was very different before 1991. Between 1983-1991, the rule required that parties transferring claims inform the court that a transfer of claims was taking place and also disclose the consideration paid for the transferred claims. A hearing would take place prior to the execution of a trade. Judicial involvement was required and resulted in judicial scrutiny of transactions—something that simply does not exist today.

there are outlier cases where this was found to cross a line and result in consequences such as disallowing votes on a plan or even equitable subordination of a claim).<sup>145</sup> Another type of case that has generated case law is where the purchaser of claims occupied a fiduciary status with the debtor.<sup>146</sup> Still another type of case that has generated case law is where there is an attempt to cleanse claims that might have risks because of a seller's malfeasance, by trading the claim to a new claim holder.<sup>147</sup>

The following is a potpourri of the more notable cases that have addressed claims trading in different contexts. Most of them imposed no adverse consequences on claims traders: *In re Kreisler*, 546 F.3d 863, 864 (7th Cir. 2008) (where a corporation named Garlin, that was owned by the individual chapter 7 debtors' sister and close friend, purchased a \$900,000 bank claim for \$16,500, and there was no disclosure of Garlin's connections to debtors and no Rule 3001(e)(2) notice was filed, the Seventh Circuit reversed the bankruptcy court's invocation of the doctrine of equitable subordination to the claim, stating: "Equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors;" the Seventh Circuit further stated that it could "put to one side whether the court's finding of inequitable conduct was correct" because even if there was misconduct, it did not harm the other creditors, who were in the same position whether the original creditor or Garlin happened to own the claim; the Seventh Circuit did note that Garlin's decision to purchase the original bank

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<sup>145</sup> *In re Applegate Prop. Ltd.*, 133 B.R. 827, 836 (Bankr. W.D. Tex. 1991) (designating votes of an affiliate of the debtor that purchased a blocking position to thwart a creditor's plan because it was done in bad faith); *In re Allegheny Int'l, Inc.*, 118 B.R. 282, 289-90 (Bankr. W.D. Pa. 1990) (because of bad faith activities, the court designated votes of a claims purchaser who purchased to get a blocking position on a plan). *But see In re First Humanics Corp.*, 124 B.R. 87, 92 (Bankr. W.D. Mo. 1991) (claims purchased by debtor's former management company to gain standing to file a plan to protect interest of the debtor was in good faith).

<sup>146</sup> *See In re Exec. Office Ctrs., Inc.*, 96 B.R. 642, 649-650 (Bankr. E.D. La. 1988) (and numerous old cites therein).

<sup>147</sup> *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.)*, 340 B.R. 180 (Bankr. S.D.N.Y. 2006), vacated, *Enron Corp. v. Springfield Assocs., L.L.C. (In re Enron Corp.)*, 379 B.R. 425 (S.D.N.Y. 2007); *Enron Corp. v. Ave. Special Situations Fund II, LP (In re Enron Corp.)*, 333 B.R. 205, 211 (Bankr. S.D.N.Y. 2005).

creditor's claim might have disadvantaged the other creditors if it interfered with the trustee's own potential settlement with the original bank creditor (note that the trustee argued that she had been negotiating a deal with bank under which bank might have reduced its claims); however, the trustee presented no evidence that any deal with the bank was imminent or even likely; thus, whether such a deal could have been reached was speculation; equitable subordination was therefore improper."); *Viking Assocs., L.L.C. v. Drewes (In re Olson)*, 120 F.3d 98, 102 (8th Cir. 1997) (case involved the actions of an entity known as Viking in purchasing all of the unsecured claims against the bankruptcy estate of two chapter 7 debtors, Hugo and Jeraldine Olson; Viking was a related entity, owned by the debtors' children, and purchased \$525,000 of unsecured claims for \$67,000; while the bankruptcy court had discounted the claims down to the purchase amount and subordinated Viking's discounted claims to the claims of the other unsecured creditors, relying on section 105 of the Bankruptcy Code, the Eighth Circuit held that the bankruptcy court lacked the authority to do this, and, thus, reversed and remanded; the Eighth Circuit noted that in 1991, Bankruptcy Rule 3001(e)(2) was amended "to restrict the bankruptcy court's power to inspect the terms of" claims transfers. *Id.* at 101 (citing *In re SPM Mfg. Corp.*, 984 F.2d 1305, 1314 n. 9 (1st Cir. 1993)); the text of the rule makes clear that the existence of a "dispute" depends upon an objection by the **transferor**; where there is no objection by the **transferor**, there is no longer any role for the court); *Citicorp. Venture Capital, Ltd. v. Official Committee of Unsecured Creditors (In re Papercraft Corp.)*, 160 F.3d 982 (3d Cir. 1998) (large investor who held seat on board of directors of debtor and debtor's parent, and who also had nonpublic information regarding the debtor's value, anonymously purchased 40% of the unsecured claims at a steep discount during the chapter 11 case, and then, having obtained a blocking position for plan voting purposes, proposed a plan to acquire debtor; the claims purchaser's claims were equitably reduced to amount

paid for the claims since investor was a fiduciary who was deemed to have engaged in inequitable conduct); *Figter Ltd. v. Teachers Ins. & Annuity Ass'n of Am. (In re Figter)*, 118 F.3d 635 (9th Cir. 1997) (Ninth Circuit affirmed bankruptcy court's ruling that a secured creditor's purchase of 21 out of 34 unsecured claims in the case was in good faith and it would not be prohibited from voting such claims on the debtor's plan, pursuant to Bankruptcy Code section 1126(e)); *In re Lorraine Castle Apartments Bldg. Corp.*, 145 F.2d 55, 57 & 58 (7th Cir. 1945) (in a case under the old Bankruptcy Act, in which there were more restrictions on claims trading, a debtor and two of its stockholders argued that the claims of purchasers of bonds should be limited to the amounts they paid for them; bankruptcy court special master found, "that, though he did not approve generally the ethics reflected by speculation in such bonds," there was no cause for limitation of the amounts of their claims, pointing out that the persons who had dealt in the bonds were not officials, directors, or stockholders of the corporation and owed no fiduciary duty to the estate or its beneficiaries—rather they were investors or speculators who thought the bonds were selling too cheaply and that they might make a legitimate profit upon them; the district court agreed, as did the Seventh Circuit, noting that "[t]o reduce the participation to the amount paid for securities, in the absence of exceptional circumstances which are not present here, would reduce the value of such bonds to those who have them and want to sell them. This would result in unearned, undeserved profit for the debtor, destroy or impair the sales value of securities by abolishing the profit motive, which inspires purchasers."); *In re Washington Mutual, Inc.*, 461 B.R. 200 (Bankr. Del. 2011), *vacated in part*, 2012 WL 1563880 (Bankr. D. Del. Feb. 24, 2012) (discussion of an equity committee's potential standing to pursue equitable subordination or equitable disallowance of the claims of certain noteholders who had allegedly traded their claims during the chapter 11

case while having material non-public information; while bankruptcy court originally indicating these were viable tools, court later vacated its ruling on this after a settlement was reached).

Suffice it to say that the courts have, more often than not, been unwilling to impose legal consequences, for an actor's involvement with claims trading. At most, in outlier-type situations during a case, courts have taken steps to disallow claims for voting purposes or to subordinate claims to other unsecured creditors for distribution purposes.<sup>148</sup> But the case at bar does not present facts that are typical of any of the situations in reported cases.

For one thing, unlike in the reported cases this court has located, there *seems to have been complete symmetry of sophistication among the claim sellers and claim purchasers here—and complete symmetry with HMIT for that matter*. All persons involved are highly sophisticated financial institutions, hedge funds, or private equity funds. No one was a “mom-and-pop” type business or vendor that might be vulnerable to chicanery. The claims ranged from being worth \$10's of millions of dollars to \$100's of millions of dollars in face value. And, of course, the sellers/transferrers of the claims have never shown up, subsequent to the claims trading

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<sup>148</sup> Note that, while some cases suggest that outright disallowance of an unsecured claim, in the case of “inequitable conduct” might be permitted (not merely equitable subordination to unsecured creditors)—usually citing to *Pepper v. Litton*, 308 U.S. 295 (1939)—the Fifth Circuit has suggested otherwise. *In re Mobile Steel Co., Inc.*, 563 F.2d 692, 699-700 (5th Cir. 1977) (cleaned up) (noting that “equitable considerations can justify only the subordination of claims, not their disallowance” and also noting that “three conditions must be satisfied before exercise of the power of equitable subordination is appropriate[:]: (i) The claimant must have engaged in some type of inequitable conduct[:]; (ii) The misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant[:]; and] (iii) Equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act.” In *Mobile Steel*, the Fifth Circuit held that the bankruptcy judge exceeded the bounds of his equitable jurisdiction by disallowing a group of claims and also reversed the subordination of certain claims, on the grounds that the bankruptcy court had made clearly erroneous findings regarding alleged inequitable conduct and other necessary facts. *Contrast In re Lothian Oil Inc.*, 650 F.3d 539 (5th Cir. 2011) (involving the question of whether a bankruptcy court may *recharacterize* a claim as equity rather than debt; the court held yes, but it has nothing to do with inequitable conduct *per se*; rather section 502(b)'s language that a claim should be allowed unless it is “unenforceable against the debtor and property of the debtor, under any agreement or applicable law....” is the relevant authority; unlike equitable subordination, recharacterization is about looking at the true substance of a transaction not the conduct of a party (if it looks like a duck and quacks like a duck, it's a duck—i.e., equity); the court indicated that section 105 is not a basis to recharacterize debt as equity; it's a matter of looking at state law to determine if there is any basis and looking at the nature of the underlying transaction—as either a lending arrangement or equity infusion.

transactions, to complain about anything. Everyone involved here is, essentially, a behemoth and there is literally no sign of innocent creditors getting harmed. Second, the case at bar is unique in that the claims traded here *had all been allowed after objections, mediation, and Rule 9019 settlements during the bankruptcy case*. Thus, the amounts that would be paid on them were “locked in,” so to speak. There was no risk to a hypothetical claims-purchaser of disallowance, offset, or any “claw-back” litigation (or—one might have reasonably assumed—any type of litigation). Third, the terms for distributions on unsecured claims had been established in a confirmed plan (although the claims were purchased before the effective date of the Plan). Thus, there was a degree of certainty regarding return on investment for the Claims Purchasers here that was much higher than if the claims had been purchased early, during, or mid-way through the case.<sup>149</sup> ***This was post-confirmation, pre-effective date claims purchasing.*** Interestingly, all three of these facts might suggest that little due diligence would be undertaken by any hypothetical purchaser. The rules of the road had been set. The court makes this observation because HMIT has suggested there is something highly suspicious about the fact that Farallon allegedly told Dondero that it did no due diligence before purchasing its claims (leading him to conclude that the Claims Purchasers must have purchased their claims based on receiving MNPI from Seery). Not only has there been no colorable evidence suggesting that insider information was shared, but the lack of due diligence in this context does not reasonably seem suspicious. The claims purchases

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<sup>149</sup> See discussion in BANKRUPTCY MARKETS, at 91:

Some claims purchasers buy before the bankruptcy petition is filed, some at the beginning of the case, and some towards the end. For example, there are investors who look to purchase at low prices either when a business is failing or early in the bankruptcy and ride through the case until payouts are fairly certain. [Citations omitted.] These investors might be hoping to buy at 30 cents on the dollar and get a payout at 70 cents on the dollar. Perhaps if they waited another six months, the payout would be 74 cents on the dollar, but the additional 4 cents on the dollar for six months might not be a worthwhile return for the time value of the investment. Other investors might not want to assume the risk that exists in the early days of a case when the fate of the debtor is much less certain, but they would gladly purchase at 70 cents on the dollar at the end of the case to get a payout of 74 cents on the dollar six months later.

were almost like passive investments, at this point—there was no risk of a claim objection and there was a confirmed plan, with a lengthy disclosure statement that described not only plan payment terms and projections, but essentially anything that any investor might want to know.

To reiterate, here, HMIT seeks leave to assert the following causes of action:

- I. Breach of Fiduciary Duties (Seery)
- II. Knowing Participation in Breach of Fiduciary Duties (Claims Purchasers)
- III. Conspiracy (all Proposed Defendants)
- IV. Equitable Disallowance (Claims Purchasers)
- V. Unjust Enrichment and Constructive Trust (all Proposed Defendants)
- VI. Declaratory Judgment (all Proposed Defendants)

*The court struggles to fathom how any of these proposed causes of action or remedies can be applied in the context of: (a) post-confirmation claims trading; (b) where the claims have all been litigated and allowed.*

In reflecting on the case law and various Bankruptcy Code provisions, the court can fathom the following hypotheticals in which claims trading during a bankruptcy case might be somehow actionable:

**Hypothetical #1:** The most obvious situation would be if a purchaser of a claim files a Rule 3001(e) Notice, and the seller/transferor then files an objection thereto. There would then be a contested hearing between purchaser and seller regarding the validity of the transfer with the bankruptcy court issuing an appropriate order after the hearing on the objection. *As noted, there was no objection to the Rule 3001(e) notices here.*

**Hypothetical #2:** Alternatively, there could be a breach of contract suit between purchaser and seller if one thinks the other breached the purchase-sale agreement somehow. Perhaps torts might also be alleged in such litigation. *As noted, there is no dispute between purchasers and sellers here.*

**Hypothetical #3:** If there is believed to be fraud in connection with a plan, a party in interest might, pursuant to section 1144 of the Bankruptcy Code, move for

revocation of the plan “at any time before 180 days after the date of entry of the order for confirmation” and the court “may revoke such order if and only if such order was procured by fraud.” *As noted, here HMIT has suggested that the “pessimistic” plan projections may have been fraudulent or misrepresentations somehow. The time elapsed long ago to seek revocation of the Plan.*

**Hypothetical #4:** As discussed above, in rare situations (bad faith), during a Chapter 11 case, before a plan is confirmed, a claims purchaser’s claim might not be allowed for voting purposes. *See* Sections 1126(e) of the Bankruptcy Code (“the court may designate any entity whose acceptance or rejection of such plan was not in good faith”). *Obviously, in this case, this is not applicable—the claims were purchased post-confirmation.*

**Hypothetical #5:** As discussed above, in rare situations (inequitable conduct), a court might equitably subordinate *claims* to *other claims*. *See* Section 510(c) of the Bankruptcy Code. But here, HMIT is seeking either: (a) equitable subordination of the *claims* of the Claims Purchaser to HMIT’s *Class 10 former equity interest* (in contravention of the explicit terms of section 510(c)) or, (b) *equitable disallowance* of the claims of the Claims Purchasers (in contravention of *Mobile Steel*).

**Hypothetical #6:** Bankruptcy Code section 502(b)(1) and the Fifth Circuit’s *Lothian Oil* case may permit “recharacterization” of a claim from debt to equity in certain circumstances, but not in circumstances like the ones in this case. Here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case.”). The problem here is that Bankruptcy Rule 9024 provides that a motion for “reconsideration of an order allowing or disallowing a claim against the estate *entered without a contest* is not subject to the one year limitation prescribed in Rule 60(c)” (emphasis added). Here there was most definitely “a contest” with regard to all of these purchased claims. *Thus, it would appear that any effort to have a court reconsider these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.*

**Hypothetical #7:** If a party believes “insider trading” occurred there are governmental agencies that investigate and police that. *Here, the purchased claims (which were not based on bonds or certificated equity interests) would not be securities so as to fall under the SEC’s purview. Moreover, there was evidence that HMIT or Dondero-Related entities requested that the Texas State Securities Board investigate the claims trading and the board did not find a basis to pursue anyone for wrongdoing.*

**Hypothetical #8:** The United States Trustee can investigate wrongdoing by a debtor or unsecured creditors committee. While the United States Trustee would naturally have concerns about members of an unsecured creditors committee (or an officer of a debtor-in-possession) adhering to fiduciary duties and not putting their

own interests above those of the estate, here, there are a couple of points that seem noteworthy. One, the claims trading activity was post-confirmation so—while certain of the claim-sellers may have still been on the unsecured creditors committee, as the effective date of the plan had not yet occurred—the circumstances are very different than if this had all happened during the early, contentious stages of the case. It seems inconceivable that there was somehow a disparity of information that might be troubling—the Plan had been confirmed and it was available for the world to see. The whole notion of “insider information” (just after confirmation here) feels a bit off-point. Bankruptcy practitioners and judges sometimes call bankruptcy a fishbowl or use the “open kimono” metaphor for good reason. It is generally a very open process. And information-sharing on the part of a debtor-in-possession or unsecured creditors committee is intended to be robust. *See, e.g.*, Bankruptcy Code sections 521 and 1102(b)(3). In a way, HMIT here seems to be complaining about this very situation that the Code and Rules have designed.

In summary, claims trading is a highly *unregulated* activity in the bankruptcy world.

***HMIT is attempting to pursue causes of action here that, to this court’s knowledge, have never been allowed in a context like this.***

*B. Back to Standing—Would HMIT Have Standing to Bring the Proposed Claims?*

The Proposed Defendants argue that HMIT lacks standing to bring the Proposed Claims, either: (a) derivatively on behalf of the Reorganized Debtor and Claimant Trust, or (b) directly on behalf of itself. Thus, they argue that this is one reason that the Motion for Leave should be denied.

In making their specific standing arguments, the parties analyze things slightly differently:

The Claims Purchasers focus primarily on HMIT’s lack of *constitutional* standing but also argue that HMIT does not have *prudential* standing under Delaware trust law to bring the Proposed Claims either individually or derivatively. Why do they mention Delaware trust law? Because the Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29.<sup>150</sup>

The Highland Parties’ standing arguments focus almost entirely on HMIT’s lack of *prudential* standing under Delaware trust law to bring the Proposed Claims.

HMIT argues that the Proposed Defendants “play fast and loose with standing arguments” and that HMIT has *constitutional* standing as a “party aggrieved”<sup>151</sup> to bring the Proposed Claims on behalf of itself. HMIT also argues that it has standing under Delaware trust law to bring a

<sup>150</sup> *See* Proposed Complaint, ¶ 26.

<sup>151</sup> Proposed Complaint, ¶7.

derivative action on behalf of the Claimant Trust, and that it not only has standing to bring the Proposed Claims derivatively on behalf of the Reorganized Debtor under the Plan, but it is the best party to do so.

1. The Different Types of Standing: Constitutional Versus Prudential

The parties are addressing two concepts of standing that can sometimes be confused and misapplied by both attorneys and judges: *constitutional Article III standing*, which implicates federal court subject matter jurisdiction,<sup>152</sup> and the narrower standing concept of *prudential standing*, which does not implicate subject matter jurisdiction but nevertheless might prevent a party from having capacity to sue, pursuant to limitations set by courts, statutes or other law.

Article III constitutional standing works as follows: a plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing three elements: (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.<sup>153</sup> “If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve.”<sup>154</sup> These elements ensure that a plaintiff has “such a personal stake in the outcome of the controversy” as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on his behalf.”<sup>155</sup>

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<sup>152</sup> Article III, Section 2 of the U.S. Constitution gives federal courts jurisdiction over enumerated cases and controversies.

<sup>153</sup> See *Thole v. U.S. Bank, N.A.*, 140 S.Ct. 1615, 1618 (2020)(citing the Supreme Court’s seminal case on the tripartite test for Article III constitutional standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), where the Supreme Court stated that “the irreducible constitutional minimum of standing contains [the] three elements”); see also *Spokeo*, 578 U.S. at 338; *Abraugh v. Altimus*, 26 F.4<sup>th</sup> 298, 302 (5<sup>th</sup> Cir. 2022) (citing *id.*).

<sup>154</sup> *Transunion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021)(cleaned up).

<sup>155</sup> *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Apart from this minimal constitutional mandate, courts and statutes have set other limits on the class of persons who may seek judicial remedies—and this is the concept of prudential standing. In its recent opinion in *Abraugh v. Altimus*,<sup>156</sup> the Fifth Circuit set forth a detailed analysis of the two types of “standing,” noting that the term “standing” is often “misused” in our legal system, which has led to confusion for both attorneys and judges.<sup>157</sup> The constitutional standing that is necessary for a court to exercise subject matter jurisdiction is broader than prudential standing and is only the first hurdle a party must clear before pursuing a claim in federal court.

The Fifth Circuit explained that *in addition to* Article III constitutional standing, “courts have occasionally articulated other ‘standing’ requirements that plaintiffs must satisfy under certain conditions, *beyond those imposed by Article III*,”<sup>158</sup> such as the “standing” requirement that might be imposed by a statute or by jurisprudence. The *Abraugh* case was a perfect example of the latter.

*Abraugh* involved the civil rights statutes that provide, among other things, that “a party must have standing under the state wrongful death or survival statutes to bring [a § 1983 cause of action]” and noted that these statutes impose additional “standing” requirements that are a matter of prudential standing, not constitutional standing.<sup>159</sup> In *Abraugh*, the Fifth Circuit reversed and remanded a district court’s dismissal of a § 1983 civil rights cause of action—noting that the district court had stated that it was dismissing based on a “lack of subject matter jurisdiction” because the plaintiff in that action lacked standing.<sup>160</sup> The plaintiff was the mother of a prisoner

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<sup>156</sup> 26 F.4th 298.

<sup>157</sup> *Id.* at 303.

<sup>158</sup> *Id.* at 302 (emphasis added).

<sup>159</sup> *Id.* at 302-303.

<sup>160</sup> *Id.* at 301.

who died by suicide while in custody who brought a § 1983 action against Louisiana correctional officers and officials. After finding that the plaintiff/mother lacked standing under Louisiana’s wrongful death and survival statutes (because there had been a surviving child and wife of the prisoner who were the proper parties with capacity to sue), the district court held that it was dismissing for lack of subject matter jurisdiction. The Fifth Circuit pointed out that the plaintiff/mother may have lacked standing under Louisiana’s wrongful death and survival statutes to bring the claim under § 1983, but that type of standing was matter of *prudential* standing, and the plaintiff/mother actually *did* have *Article III* constitutional standing (“a constitutionally cognizable interest in the life of her son”).<sup>161</sup> Thus, the district court’s error was *not* in finding that the plaintiff/mother lacked prudential standing but in improperly conflating the two standing concepts when it held that it had lacked *subject matter jurisdiction* to consider any of the plaintiff’s/mother’s amended complaints.<sup>162</sup> The Fifth Circuit noted specifically that<sup>163</sup>

prudential standing does not present a jurisdictional question, but “a merits question: who, according to the governing substantive law, is entitled to enforce the right?” As the Federal Rules of Civil Procedure make clear, “an action must be prosecuted in the name of the real party in interest.” FED. R. CIV. P. 17(a)(1). And a violation of this rule is a failure of “prudential” standing. “Not one of our precedents holds that the inquiry is jurisdictional.” It goes only to the validity of the cause of action. And “the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction.”

Somewhat relevant to this prudential standing discussion is the fact that, in this bankruptcy case, there have been dozens of appeals of bankruptcy court orders by Dondero and Dondero-related entities. In connection therewith, both the district court and the Fifth Circuit, in evaluating the *appellate standing* of the appellants, have taken pains to distinguish between the concepts of:

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 301, 303-304. The Fifth Circuit opined that “the district court did not err in describing [the mother’s] inability to sue under Louisiana law as a defect of ‘standing[, b]ut it is a defect of prudential standing, not Article III standing” thus technically not implicating the federal court’s subject matter jurisdiction. *Id.* at 303.

<sup>163</sup> *Id.* at 304 (cleaned up).

(a) traditional, constitutional standing, and (b) a type of prudential standing known as the “person aggrieved” test, which is applied in the Fifth Circuit in determining whether a party has *standing to appeal a bankruptcy court order*—which it describes as a narrower and “more exacting” standard than constitutional standing. As explained in a Fifth Circuit opinion addressing the standing of a Dondero-related entity called NexPoint to appeal bankruptcy court orders allowing professional fees, the “person aggrieved” standard that is typically applied to ascertain bankruptcy *appellate* standing originated in a statute in the Bankruptcy Act. The Fifth Circuit continued to apply it after Congress removed the provision when it enacted the Bankruptcy Code in 1978.<sup>164</sup> Because it is narrower and “more exacting” than the test for Article III constitutional standing, it involves application of prudential standing considerations.<sup>165</sup> The Fifth Circuit describes the “person aggrieved” test for bankruptcy appellant standing as requiring that an appellant show that it was “*directly and adversely affected pecuniarily* by the order of the bankruptcy court,” requiring “a higher causal nexus between act and injury than traditional standing . . . that best deals with the unique posture of bankruptcy actions.”<sup>166</sup> In affirming the district court’s dismissal of NexPoint’s appeal of the bankruptcy court’s fee orders, due to NexPoint’s lack of prudential standing under the “person aggrieved” test, the court rejected NexPoint’s argument that it had standing to appeal

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<sup>164</sup> *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Capital Management, L.P.)*, No. 22-10575, 2023 WL 4621466, \*2 (5th Cir. July 19, 2023)(citing *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004)(cleaned up)).

<sup>165</sup> *Id.* at \*1, \*\*4-6 (where the Fifth Circuit repeatedly throughout its opinion refers to the “person aggrieved” test for standing in bankruptcy actions as a test for “prudential standing.”); *see also Dondero v. Highland Capital Mgt., L.P.*, Civ. Act. No. 3:20-cv-3390-X, 2002 WL 837208 (N.D. Tex. Mar. 18, 2022)(where the district court, in addressing Dondero’s standing to appeal a bankruptcy court order approving a Rule 9019 settlement (between Highland and Acis Capital Management GP LLC), notes that “[i]t is substantially more difficult to have standing to appeal a bankruptcy court’s order than it is to pursue a typical complaint under Article III of the U.S. Constitution” and that “the Fifth Circuit has long recognized that bankruptcy cases’ wide-reaching scope calls for a more stringent standing test.”).

<sup>166</sup> *See id.* at \*3 (cleaned up). The court quotes its 2018 opinion in *Matter of Technicool Sys., Inc. (In re Technicool)*, 896 F.3d 382, 385 (5th Cir. 2018), which explains why the “person aggrieved” prudential standing standard is applied in bankruptcy actions: “Bankruptcy cases often involve numerous parties with conflicting and overlapping interests. Allowing each and every party to appeal each and every order would clog up the system and bog down the courts. Given the specter of such sclerotic litigation, standing to appeal a bankruptcy court order is, of necessity, *quite limited.*” *Id.* (cleaned up).

because “it meets traditional Article III standing requirements [and that the more exacting] prudential standing considerations such as the ‘person aggrieved’ standard” did not survive the Supreme Court’s 2014 *Lexmark*<sup>167</sup> opinion,<sup>168</sup> which addressed standing issues in the context of false advertising claims under the Lanham Act and reminded that courts may not “limit a cause of action that Congress has created merely because ‘prudence’ dictates.”<sup>169</sup> The Fifth Circuit held that the Supreme Court’s reminder in *Lexmark* did not nullify the “person aggrieved” test for prudential standing in bankruptcy appeals, citing its own decision in *Superior MRI Services Inc. v. Alliance Healthcare Services, Inc.*<sup>170</sup> (rendered a year after *Lexmark* was decided), in which it held that *Lexmark* applied only to the circumstances of that case, “rather than broadly modifying—or undermining—all prudential standing concerns, such as the one animating the ‘person aggrieved’ standard in bankruptcy appeals.”<sup>171</sup>

Similarly, in yet another appeal in this bankruptcy case involving three Dondero-related entities as appellants (NexPoint, Dugaboy, and HCMFA)—this one an appeal of a bankruptcy court order authorizing the creation of an indemnity subtrust and entry into an indemnity trust agreement—the district court noted the parties’ confusion about the standing issue, as exemplified in the parties’ reference to constitutional standing when they were actually arguing that they had prudential standing under the “person aggrieved” test: “Although the parties frame this issue as one of constitutional standing . . . they cite case law and present arguments about the prudential

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<sup>167</sup> *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

<sup>168</sup> *Id.* at \*2.

<sup>169</sup> *See id.* at \*4 (cleaned up).

<sup>170</sup> 778 F.3d 502 (5th Cir. 2015).

<sup>171</sup> *NexPoint*, 2023 WL 4621466 at \*4 (cleaned up). The Fifth Circuit explicitly stated that “*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here.” *Id.* at \*5 (cleaned up).

standing requirement embodied in the ‘person aggrieved’ test.”<sup>172</sup> The district court noted that it had an “independent obligation to consider constitutional standing before reaching its prudential aspects.”<sup>173</sup> The district court dismissed the appeal as to Dugaboy and HCMFA for lack of standing but, upon concluding that NexPoint did have standing, dismissed the appeal as to it on the merits. The Fifth Circuit affirmed.<sup>174</sup> Interestingly, the court noted that, while the parties did not contest the district court’s determination that NexPoint had standing to pursue the appeal, it “may consider prudential standing issues *sua sponte*.”<sup>175</sup> In doing so, the Fifth Circuit recognized the distinction between constitutional standing and the prudential “person aggrieved” test applied to bankruptcy appeals, which “is, of necessity, quite limited” and “an even more exacting standard than traditional constitutional standing,” as it requires an appellant to show that it is “directly, adversely, and financially impacted by a bankruptcy order.”<sup>176</sup>

In summary, in analyzing whether HMIT would have standing to bring the Proposed Claims, this court must **first** determine whether HMIT would have constitutional standing under Article III (which is a subject matter jurisdiction hurdle) and, assuming it does, then **additionally** address whether HMIT would also have prudential standing (i.e., capacity to sue) pursuant to any applicable statutes (e.g., Delaware statutes), jurisprudence, or other substantive law that might **limit** who may sue. Notwithstanding HMIT’s argument that it has standing under the “person

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<sup>172</sup> *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, \*1 (N.D. Tex. Jan. 18, 2022)(cleaned up). The district court dismissed the appeals of two of the appellants, Dugaboy and HCMFA, finding that they lacked both constitutional standing and prudential standing under the “person aggrieved” test and affirmed the bankruptcy court’s order after finding the third appellant, NexPoint, to have prudential standing under the “person aggrieved” test. *Id.* at \*\*1-3 and \*4.

<sup>173</sup> *Id.* at \*1 n.2.

<sup>174</sup> *Highland Capital Mgt. Fund, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, 57 F.4th 494 (5th Cir. 2023).

<sup>175</sup> *Id.* at 501 (cleaned up).

<sup>176</sup> *Id.*

aggrieved” test<sup>177</sup>—which, as discussed above, is a matter of prudential standing—this is applied only in the context of bankruptcy *appellate* matters.<sup>178</sup> As noted in its most recent opinion discussing standing in an appeal from the Highland bankruptcy case, the Fifth Circuit reiterated that the “person aggrieved” test is a test for bankruptcy *appellate* standing, which is narrower than a party in interest’s right to be heard in bankruptcy cases in general.<sup>179</sup> The court rejected an argument that Bankruptcy Code § 1109, which provides that “[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter” confers *appellate* standing, noting that “one’s standing to appear and be heard before the bankruptcy court [is] a concept distinct from standing to appeal the merits of a decision” and that the “person aggrieved” test for bankruptcy appellate standing is narrower than the test for determining one’s standing to appear and be heard in a bankruptcy proceeding.<sup>180</sup>

Thus, the court will now analyze whether HMIT would, at a minimum, have constitutional standing to bring the Proposed Claims.

## 2. HMIT Would Lack Article III Constitutional Standing to Bring the Proposed Claims.

As noted above, the Supreme Court and the Fifth Circuit have made clear that constitutional standing is necessary for a court to exercise subject matter jurisdiction. It is only the first hurdle a party must clear before pursuing a claim in federal court. HMIT, as plaintiff, would bear the

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<sup>177</sup> HMIT insists that it has constitutional standing to bring claims on its individual behalf “as an aggrieved party.” See Reply, ¶ 7.

<sup>178</sup> HMIT’s argument in this matter that it has constitutional standing because it is a “party aggrieved” incorrectly conflates the prudential bankruptcy appellate “person aggrieved” test with the broader test that is applied to constitutional standing. The court is not being critical of this mistake. As noted at *supra* note 149, the Fifth Circuit in *Abraugh* pointed out that courts and attorneys alike have created confusion by misusing the term “standing” when they equate a lack of “standing,” in all instances, with a lack of subject matter jurisdiction, even when the party is found to lack only prudential standing. Thus, HMIT is not alone in its confusion over the two different concepts of standing.

<sup>179</sup> See *NexPoint*, 2023 WL 4621466 at \*6.

<sup>180</sup> *Id.* at \*6 (cleaned up)(“Because Section 1109(b) expands the right to be heard [in a bankruptcy proceeding] to a wider class than those who qualify under the ‘person aggrieved’ standard, courts considering the issue have concluded that merely being a party in interest is insufficient to confer *appellate* standing.”)(emphasis added).

burden of establishing: (1) that it suffered an injury in fact that is concrete, particularized, and actual or imminent—not conjectural or hypothetical, (2) that there is a causal connection between the injury and the conduct complained of, and (3) it must be likely, not speculative, that the injury will be redressed by a favorable decision.<sup>181</sup>

Concrete and Particularized; Actual or Imminent. As the Supreme Court made clear in the *Lujan* case, the injury in fact element requires a showing that the injury was “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”<sup>182</sup> The Supreme Court in the *Spokeo* case expounded on the “concrete and particularized” requirements of the “injury in fact” element. Particularization requires a showing that the injury “must affect the plaintiff in a personal and individual way,” but while particularization is necessary, it alone is “not sufficient,” because an injury in fact must also be “concrete.”<sup>183</sup> And, concreteness is “quite different from particularization.”<sup>184</sup> A “concrete” injury must be “real,” and “not abstract,” though it does not mean that the injury must be “tangible,” as the injury can be intangible and nevertheless be concrete.<sup>185</sup> In addition to the concreteness and particularization requirements, an injury in fact must be “actual or imminent” such that “allegations of injury that is merely conjectural or hypothetical do not suffice to confer standing.”<sup>186</sup> “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly*

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<sup>181</sup> See *supra* note 153.

<sup>182</sup> *Lujan*, 504 U.S. at 560 (cleaned up).

<sup>183</sup> *Spokeo*, 578 U.S. at 339.

<sup>184</sup> *Id.* at 340.

<sup>185</sup> *Id.*

<sup>186</sup> *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

impending”; “allegations of *possible* future injury are not sufficient.”<sup>187</sup>

Traceability - Causal Connection. As to the second element—that the injury was caused by the defendant—the Supreme Court in *Lujan* further described it as requiring a showing that “the injury has to be fairly traceable to the challenged action of the defendant.”<sup>188</sup> The “fairly traceable” test requires an examination of “the causal connection between the assertedly unlawful conduct and the alleged injury.”<sup>189</sup>

Redressability. The third element—redressability—requires the court to examine the connection “between the alleged injury and the judicial relief requested.”<sup>190</sup> “Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court.”<sup>191</sup> “[A] court must determine that there is an available remedy which will have a ‘substantial probability’ of redressing the plaintiff’s injury.”<sup>192</sup>

The Claims Purchasers argue that HMIT lacks constitutional standing to pursue the claims asserted in the Proposed Complaint because: (i) neither HMIT nor the Bankruptcy Estate was injured by the Claim Purchasers’ acquisition of the claims; and (ii) the Proposed Complaint lacks a theory of cognizable damages to the Reorganized Debtor, the Claimant Trust, and/or the beneficiaries of the Claimant Trust.<sup>193</sup>

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<sup>187</sup> *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013)(cleaned up); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir. 2023)(“[Injury] cannot be speculative, conjectural, or hypothetical [and] [a]llegations of only a ‘possible’ future injury similarly will not suffice.”)(cleaned up).

<sup>188</sup> *Lujan*, 504 U.S. at 560-61 (cleaned up).

<sup>189</sup> *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

<sup>190</sup> *Id.* (noting “it is important to keep the [‘fairly traceable’ and ‘redressability’] inquiries separate if the ‘redressability’ component is to focus on the requested relief.”).

<sup>191</sup> *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998).

<sup>192</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95, 129 n.20 (1983)(Marshall, J., dissenting)(cleaned up); *see also Ondrusek v. U.S. Army Corps of Engineers*, Civ. Act. No. 3:22-cv-1874-N, 2023 WL 2169908, at \*5 (“Plaintiffs have not demonstrated that any available remedy would be sufficiently likely to relieve their alleged economic losses. Without a showing of redressability, those harms also cannot support Plaintiff’s Article III standing.”).

<sup>193</sup> As noted earlier, certain of the Proposed Defendants—the Highland Parties—do not focus on HMIT’s lack of constitutional standing to pursue the Proposed Claims against them, but on its lack of prudential standing under

The court agrees with the Claims Purchasers’ argument here. What is HMIT’s concrete and particularized injury—that is “real” and is not abstract? That is not conjectural or hypothetical? That is actual or imminent?

Recall that, under the Plan, HMIT holds a Class 10 contingent interest in the Claimant Trust that only realizes value if all creditors are paid in full with interest. HMIT alleges the following injury: it has suffered a devaluation of its invested Contingent Claimant Trust Interest by virtue of the alleged over-compensation of Seery as the Claimant Trustee—Seery’s alleged over-compensation depletes the assets in the Claimant Trust available for distribution to creditors under the Plan, such that there is less likely a chance that HMIT ultimately receives any distributions on account of its Class 10 Contingent Claimant Trust Interest.<sup>194</sup> Yet, HMIT testified, through both witnesses Dondero and Patrick, that it had no personal knowledge of what Seery’s actual compensation is under the CTA at the time HMIT filed its Motion for Leave. It was clear that HMIT’s allegations regarding Seery’s “excessive” compensation were based entirely on Dondero’s pure speculation. In reality, Seery’s base salary is exactly what the bankruptcy court approved during the bankruptcy case by a court order (after negotiations between Seery and the Committee). The CTA now further governs his compensation. The CTA, which was publicly filed *in advance of* the Plan confirmation hearing and approved by this court as part of the Plan

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applicable law. Because constitutional standing is a matter of subject matter jurisdiction, the court has an independent duty to determine whether HMIT would have constitutional standing to pursue the Proposed Claims in federal court. The issue cannot be forfeited or waived by a party. *See Abraugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (“[S]ubject-matter jurisdiction, because it involves a court’s power to hear a case, can never be forfeited or waived. Moreover, courts . . . have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”)(cleaned up); *Abraugh*, 26 F.4th at 304 (“It is our constitutional duty, of course, to decline subject matter jurisdiction where it does not exist—and that is so whether the parties challenge Article III standing or not.”)(cleaned up).

<sup>194</sup> At the June 8 Hearing, HMIT’s counsel was unable to identify any other injury HMIT has alleged to have suffered. HMIT’s counsel acknowledged that claims trades, in and of themselves, would not “involve injury to the Reorganized Debtor and to the Claimant Trust” and that claims trades are “normally outside the purview of the bankruptcy court” but that “[h]ere, we have alleged . . . injury [that] takes the form of unearned excessive fees that Mr. Seery has garnered as a result of his relationship and arrangements, as we have alleged, with the Claims Purchasers.” June 8 Hearing Transcript, 67:16-68:8. HMIT can only point to Seery’s excess compensation as injury.

(which has been affirmed by the Fifth Circuit), specifically provides that Seery’s post-Effective Date compensation would include a “Base Salary” (again, same as during the bankruptcy case), a “success fee,” and “severance.”<sup>195</sup> The CTA discussed the role of the Committee and then the CTOB in setting the success fee and severance and the like. A fully executed copy of the CTA was admitted into evidence at the June 8 Hearing. HMIT is essentially arguing that its injury (i.e., diminished likelihood of realizing value on its Contingent Claimant Trust Interest) stems from a court-sanctioned and creditor-approved process for approving compensation to Seery. Moreover, HMIT has failed to plead facts sufficient to show that, even if Seery received excessive compensation and that compensation is ordered to be returned, HMIT’s Contingent Claimant Trust Interest will ever vest. The district court and the Fifth Circuit in various appeals by Dugaboy, another Dondero-related entity that, similar to HMIT, was a holder of a limited partnership interest in Highland whose interests were terminated as of the Effective Date of the Plan in exchange for a Contingent Claimant Trust Interest, have repeatedly rejected Dugaboy’s claims to have standing based on the *speculative nature of its alleged injuries as a contingent beneficiary of the Claimant Trust under the Plan*. For example, the Fifth Circuit affirmed the district court’s dismissal of an appeal by Dugaboy of the bankruptcy court’s order authorizing the creation of an indemnity subtrust, wherein Judge Fitzwater found that, in addition to lacking prudential standing under the

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<sup>195</sup> The Disclosure Statement that was approved by this court, after notice and a hearing, on November 24, 2020, provided that “The salient terms of each Trustee’s employment, including such Trustee’s duties and compensation shall be set forth in the Claimant Trust Agreement . . . .” The CTA was part of a Plan Supplement (as amended) that was filed in advance of the confirmation hearing and provided:

Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the “Base Salary”). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

See Highland Ex. 38, at § 3.13(a)(i).

“person aggrieved” test to appeal the bankruptcy court’s order, Dugaboy lacked constitutional standing “because they have not identified any injury fairly traceable to the Order: *the injuries identified are speculative at best and nonexistent at worst.*”<sup>196</sup> HMIT’s allegations of injury are, without a doubt, “merely conjectural or hypothetical” and are only speculative of possible future injury if its Contingent Claimant Trust Interest ever vests.”<sup>197</sup> The court finds that HMIT would not meet the “concrete and particularized” or the “actual or imminent” requirements for an “injury in fact,” and, thus, would lack constitutional standing to pursue the Proposed Claims.

With regard to the second requirement of constitutional standing—whether HMIT could show “traceability” with respect to the Claims Purchasers and/or Seery (i.e., a “causal connection between the assertedly unlawful conduct and the alleged injury”<sup>198</sup>), as noted above, there is only a speculative injury. Even if there is unlawful conduct asserted (i.e., sharing of MNPI to Claims Purchasers who then, as a *quid pro quo*, rubber stamped excessive compensation for Seery), there is nothing other than a hypothetical theory of an alleged injury (i.e., an allegedly less likelihood of a distribution on a Contingent Claimant Trust Interest).

With respect to the third requirement of constitutional standing—whether HMIT can show “redressability” (i.e., that it is likely, not speculative, that the injury can be redressed by a favorable

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<sup>196</sup> *Highland Capital Mgt. Fund Advisors, L.P. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-1895-D, 2022 WL 270862, \*1 n.2 (N.D. Tex. Jan. 28, 2022), *aff’d* 57 F.4th 494 (5th Cir. 2023)(emphasis added); *see also* Judge Scholer’s opinion in *Dugaboy Inv. Tr. v. Highland Capital Mgt., L.P. (In re Highland Capital Mgt., L.P.)*, Civ. Act. No. 3:21-cv-2268-S, 2022 WL 3701720, \*3 (N.D. Tex. Aug. 8, 2022)(cleaned up), *aff’d per curiam*, No. 22-10831, 2023 WL 2263022 (5th Cir. Feb. 28, 2023) (where Dugaboy had argued that “*its pecuniary interest is . . . a potential recovery under the Plan as one of Debtor’s former equity holders*” and that “it ha[d] standing as a ‘contingent beneficiary’ under the Plan, or a beneficiary who will be entitled to payment after all creditors are paid in full,” and Judge Scholer stated, “This assertion is premised on the assumption that Dugaboy’s 0.1866% pre-bankruptcy limited partnership interest in Debtor—which was extinguished under the Plan—makes it a contingent beneficiary of the creditor trust created under the Plan. . . . [S]uch a ‘speculative prospect of harm is far from a direct, adverse, pecuniary hit’ as required to confer standing.”

<sup>197</sup> *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009).

<sup>198</sup> *Allen v. Wright*, 468 U.S. 737, 753 n. 19 (1984).

decision), there are multiple problems here.<sup>199</sup> The major remedy sought here is the equitable disallowance of the allowed Purchased Claims (and disgorgement and/or constructive trust of amounts paid or owed to the Claim Purchasers on account of their claims). There is no such remedy available here. As noted earlier, there is a similar concept of *equitable subordination* of a claim to another claim, or of an interest to another interest, pursuant to Bankruptcy Code section 510(c). But under the literal terms of section 510(c), *claims cannot be subordinated to interests*. Moreover, the Fifth Circuit noted in the *Mobile Steel* case,<sup>200</sup> that *equitable disallowance* of a claim (as opposed to equitable subordination of a claims) is not an available remedy. Bankruptcy Code section 502(b)(1) and the Fifth Circuit’s *Lothian Oil* case might permit “recharacterization” of a claim from debt to equity in certain circumstances—but not based on inequitable conduct but rather on the nature of a financial transaction. In any event, here, the claims have already been adjudicated and allowed (some after mediation, and all after Rule 9019 settlement orders). The only way to reconsider a claim in a bankruptcy case that has already been allowed is through Bankruptcy Code section 502(j) (“A claim that has been allowed or disallowed may be reconsidered for cause. . . according to the equities of the case.”). As noted earlier, the problem here is that Bankruptcy Rule 9024 provides that a motion for “reconsideration of an order allowing or disallowing a claim against the estate *entered without a contest* is not subject to the one year limitation prescribed in Rule 60(c)” (emphasis added). As further noted earlier, here there was most definitely a “contest” with regard to all of these purchased claims. ***Thus, it would appear***

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<sup>199</sup> See *supra* notes 182-184 and accompanying text. The court will note that, as discussed *supra* note 141 and pages 71-72, the remedy of equitable subordination (as to the Claims Purchasers) would not redress HMIT’s alleged injury (because equitable subordination of claims to interests is not an available remedy in the Fifth Circuit and thus subordination of the Purchased Claims to other claims would not change HMIT’s distributions from the Claimant Trust, if any), and because outright disallowance of all or part of the already allowed Purchased Claims is not an available remedy either, HMIT would not be able to meet the “redressability” requirement with respect to the Claims Purchasers.

<sup>200</sup> *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5<sup>th</sup> Cir. 1977).

*that any effort to have a court reconsider and potentially disallow these claims pursuant to section 502(j) is untimely—as it has been well beyond a year since they were allowed.*

3. HMIT Would Also Lack Prudential Standing to Bring the Proposed Claims.

Even if HMIT would have constitutional standing to bring the Proposed Claims in an adversary proceeding filed in the bankruptcy court, the Proposed Claims would still be barred if HMIT would lack prudential standing to bring them under applicable state or federal law. HMIT argues that it does have prudential standing under both federal bankruptcy law and Delaware law to pursue the Proposed Claims derivatively and also to bring the Proposed Claims in its individual capacity.

With regard to “federal bankruptcy law,” HMIT argues that it has standing pursuant to: (a) Rule 23.1 of the Federal Rules of Civil Procedure, pertaining to derivative actions, which “applies to this proceeding pursuant to” Rule 7023.1 of the Federal Rules of Bankruptcy Procedure, and (b) *Louisiana World Exposition v. Federal Insurance Co. (“LWE”)*,<sup>201</sup> the Fifth Circuit’s leading case addressing when a creditors committee may be granted standing to bring causes of action on behalf of a bankruptcy estate. But, federal bankruptcy law does not confer standing *where the plaintiff otherwise lacks standing under applicable state law*. In other words, whether HMIT would have prudential standing to sue under Delaware law is dispositive of the issue, regardless of the forum. Rule 23.1 “speaks only to the adequacy of the . . . pleadings,” and “cannot be understood to ‘abridge, enlarge, or modify any substantive right,’”<sup>202</sup> including a right (or lack thereof) to bring a derivative action under the substantive law of Delaware. Additionally, HMIT’s reliance on *LWE* is misplaced: *LWE* permits creditors, in certain circumstances *during* a bankruptcy case, to “file

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<sup>201</sup> 858 F.2d 233 (5th Cir. 1988).

<sup>202</sup> *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 96 (1991)(quoting 28 U.S.C. § 2072(b)).

suit on behalf of a debtor-in-possession or a trustee<sup>203</sup> and does not apply to a party’s right to sue, derivatively, on behalf of the Reorganized Debtor or any entity that is the assignee of the former bankruptcy estate’s assets. Upon confirmation of the Plan, the bankruptcy estate of Highland ceased to exist,<sup>204</sup> Highland is no longer a debtor-in-possession but a reorganized debtor, and the Claimant Trust is a new entity created under the Plan and Claimant Trust Agreement. Even if *LWE* did apply in this *post*-confirmation context, it supports the application of Delaware law to the issue of prudential standing and does not supersede state-law requirements for standing. In *LWE*, before addressing the requirements a creditors’ committee must meet to sue derivatively on behalf of a bankruptcy estate as a matter of federal bankruptcy law, the Fifth Circuit conducted a lengthy analysis to determine “as a threshold issue” whether the creditors’ committee in that case could assert its claims under Louisiana law.<sup>205</sup> The court specifically addressed whether the creditors’ committee could pursue a derivative action under Louisiana law and concluded that “there is no bar in Louisiana law to actions brought by or in the name of a corporation against the directors and officers of the corporation which benefit only the creditors of the corporation; indeed, Louisiana law specifically recognizes such actions.”<sup>206</sup> So, even under *LWE* (which the court does not think applies in this post-confirmation context), if HMIT would be barred from bringing a derivative action on behalf the Reorganized Debtor or Claimant Trust under state law, the analysis stops there.<sup>207</sup> Thus, the court looks to Delaware law to determine if HMIT would have prudential standing to pursue the derivative claims on behalf the Reorganized Debtor and the Claimant Trust.

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<sup>203</sup> *LWE*, 858 F.2d at 247.

<sup>204</sup> See *In re Craig’s Stores*, 266 F.3d 388, 390 (5th Cir. 2001).

<sup>205</sup> *LWE*, 858 F.2d at 236-45.

<sup>206</sup> *Id.* at 243.

<sup>207</sup> See *In re Dura Automotive Sys., LLC*, No. 19-123728 (Bankr. D. Del. June 10, 2020), Docket No. 1115 at 46 (where the Delaware bankruptcy court denied the creditors’ committee standing to sue derivatively on behalf of a Delaware LLC because the committee lacked standing under the Delaware LLC Act, stating, “To determine that the third party

HMIT acknowledges that both the Reorganized Debtor and the Claimant Trust are organized under Delaware law, and thus the cause of action against Seery alleging breach of fiduciary duties to the Reorganized Debtor and the Claimant Trust are governed by Delaware law under the “Internal Affairs Doctrine.”<sup>208</sup> In addition, because HMIT’s breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting theory of liability as to the Claims Purchasers is also governed by Delaware law.<sup>209</sup> For the reasons set forth below, the court finds that HMIT would lack prudential standing under Delaware law to bring the claims set forth in the Proposed Complaint, derivatively, on behalf of either the Claimant Trust or the Reorganized Debtor.

a) First, HMIT Would Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Claimant Trust.

The Claimant Trust is a Delaware statutory trust governed by the Delaware Statutory Trust Act, 12 Del. C. §§ 3801–29,<sup>210</sup> and “to proceed derivatively against a Delaware statutory trust, a plaintiff has the burden of satisfying the continuous ownership requirement” such that “the plaintiff must be a beneficial owner” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.”<sup>211</sup> This requirement is “mandatory and exclusive” and only “a beneficial owner” “has standing to bring a derivative claim on behalf of the

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may bring the claim under the derivative basis and, thus, step into the shoes of the debtor to pursue them, the Court must look to the law of the debtors’ state of incorporation or formation.”).

<sup>208</sup> Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

<sup>209</sup> *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

<sup>210</sup> *See* Proposed Complaint, ¶ 26.

<sup>211</sup> *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at \*19 n.123 (Del. Ch. June 15, 2011), *aff’d* 38 A.3d 1254 (Del. 2012); 12 Del C. § 3816(b).

Trust.”<sup>212</sup> The Highland Parties argue that HMIT is not a “beneficial owner” of the Claimant Trust and, therefore, would lack standing to bring derivative claims on behalf of the Claimant Trust. HMIT argues to the contrary: that it *is* currently, and was at all relevant times, a “beneficial owner” of the Claimant Trust under Delaware trust law such that it would have standing to bring derivative claims on behalf of the Claimant Trust if it were allowed to proceed with the filing of the Proposed Complaint. The disagreement turns on the nature of HMIT’s interest under the Plan and the Claimant Trust Agreement and whether HMIT, as a holder of such interest, would be considered a “beneficial owner” of the Claimant Trust under Delaware trust law.

As noted, pursuant to the Plan, HMIT’s former limited partnership interest in Highland was cancelled as of the Effective Date in exchange for its pro rata share of a “Contingent Claimant Trust Interest,” as defined under the Plan.<sup>213</sup> HMIT argues that its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present “beneficial owner” under Delaware trust law.

The Highland Parties argue that HMIT is not a “beneficial owner” of the Claimant Trust; rather, the “beneficial owners” of the Claimant Trust are the “Claimant Trust Beneficiaries,”<sup>214</sup> which are defined in the Plan and the CTA as “the Holders of Allowed General Unsecured Claims” (which are in Class 8 under the Plan) and “Holders of Allowed Subordinated Claims” (which are in Class 9 under the Plan);<sup>215</sup> HMIT, a holder of a Class 10 interest under the Plan, is neither.

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<sup>212</sup>*In re Nat’l Coll. Student Loan Tr. Litig.*, 251 A.3d 116, 191 (Del. Ch. 2020) (citing *CML V, LLC v. Bax*, 28 A.3d 1037, 1042 (Del. 2011)). HMIT acknowledges this requirement in its Reply: “Delaware statutory trust law provides that a plaintiff in a derivative action on behalf of a trust must be a beneficial owner at the time of the action and at the time of the transaction.” Reply, ¶ 19 (citing 12 Del C. § 3816).

<sup>213</sup> See Plan Art. III.H.10 and Art. I.B.44.

<sup>214</sup> Section 2.8 of the CTA provides, “The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust . . . .” HMIT Ex. 26, § 2.8.

<sup>215</sup> See Plan Art. I.B.44 (“‘Claimant Trust Beneficiaries’ means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the

HMIT, as the holder of a “Contingent Claimant Trust Interest,” has only an *unvested* contingent interest in the Claimant Trust and, as such, is not a “beneficial owner” of the Claimant Trust for standing purposes under Delaware trust law. HMIT argues that it “should be treated as a vested Claimant Trust Beneficiary due to [the Proposed Defendants’] wrongful conduct and considering the current value of the Claimant Trust Assets before and after the relief requested herein.”<sup>216</sup> The court disagrees.

HMIT’s status as a “beneficiary” of the Claimant Trust is defined by the CTA itself, pure and simple. The CTA specifically provides that “Contingent Trust Interests” “shall not have any rights under this Agreement” and will not “be deemed ‘Beneficiaries’ under this Agreement,” “unless and until” they vest in accordance with the Plan and the CTA. It is undisputed that HMIT’s Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested based on HMIT’s unsupported allegation of wrongdoing on the part of Seery, the Claimant Trustee. Thus, the court finds that HMIT is not a “beneficial owner” of the Claimant Trust and, therefore, lacks prudential standing under Delaware law to bring derivative claims on behalf of the Claimant Trust.<sup>217</sup>

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Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.”); CTA § 1.1(h). *See also*, CTA, 1 at n.2 (“For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.”). HMIT Ex. 26.

<sup>216</sup> Proposed Complaint ¶ 24.

<sup>217</sup> *See Nat’l Coll.*, 251 A.3d at 190–92 (dismissing creditors’ derivative claims because they were not “beneficial owners of the Trusts”); *Hartsel*, 2011 WL 2421003, at \*19 n.123 (dismissing derivative claims by investors that “no longer own shares” because “those investors no longer have standing to pursue a derivative claim”).

- b) HMIT Would Likewise Lack Prudential Standing Under Delaware Law to Bring Derivative Actions on behalf of the Reorganized Debtor.

HMIT acknowledges that the Reorganized Debtor, Highland Capital Management, L.P., is a Delaware limited liability partnership governed by the Delaware Limited Partnership Act, 6 Del. C. § 17-101, *et seq.*<sup>218</sup> To bring “a derivative action” on behalf of a limited partnership, “the plaintiff must be a partner or an assignee of a partnership interest” continuously from “the time of the transaction of which the plaintiff complains” through “the time of bringing the action.”<sup>219</sup>

HMIT is not a partner, general or limited, of the Reorganized Debtor limited partnership. HMIT *was* a limited partner in the original debtor (specifically, a holder of Class B/C Limited Partnership interests in Highland), but that limited partnership interest was extinguished on August 11, 2021 (the Effective Date of the Plan) per the terms of the Plan, and HMIT does not own any partnership interest in the newly created Reorganized Debtor limited partnership.<sup>220</sup> Because HMIT would not hold a partnership interest in the Reorganized Debtor at “the time of bringing the action,” it “lacks derivative standing” to bring claims “on the partnership’s behalf.”<sup>221</sup> HMIT likewise cannot satisfy “the continuous ownership requirement”; when HMIT’s limited partnership interest in the original Debtor was cancelled on the Plan’s Effective Date, HMIT “los[t] standing to continue a derivative suit” on behalf of the Debtor.<sup>222</sup> Finally, to the extent HMIT

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<sup>218</sup> Proposed Complaint ¶ 25.

<sup>219</sup> 6 Del. C. § 17-1002; *see Tow v. Amegy Bank, N.A.*, 976 F. Supp. 2d 889, 904 (S.D. Tex. 2013) (“The [Delaware] partnership act facially bars any party other than a limited partner from suing derivatively. . . . Delaware courts historically have interpreted the provisions as giving the partners exclusive rights to sue for breach of another party’s fiduciary duties to them.”) (quoting *CML V, LLC v. Bax*, 6 A.3d 238, 245 (Del. Ch. 2010), *aff’d* 28 A.3d 1037 (Del. 2011)); *El Paso Pipeline GP Co. v. Brinckerhoff*, 152 A.3d 1248, 1265 n.87 (Del. 2016) (“The statutory foundation for the continuous ownership requirement in the corporate realm is echoed in the limited partnership context.”) (citing 6 Del. C. § 17-211(h)).

<sup>220</sup> *See* Plan Art. IV.A.

<sup>221</sup> *Tow*, 976 F. Supp. 2d at 904 (dismissing derivative claims by creditor on behalf of partnership for lack of standing).

<sup>222</sup> *El Paso*, 152 A.3d at 1265 (cleaned up) (dismissing derivative action for lack of standing where plaintiff’s partnership interest was extinguished by a merger transaction); *see also Schmermerhorn v. CenturyTel, Inc. (In re*

seeks to bring a “double derivative” action on behalf of the Claimant Trust based on claims purportedly held by its wholly owned subsidiary, the Reorganized Debtor, HMIT lacks standing. A “double derivative” action is a suit “brought by a shareholder of a parent corporation to enforce a claim belonging to a subsidiary that is either wholly owned or majority controlled.”<sup>223</sup> And, under Delaware law, “parent level standing is required to enforce a subsidiary’s claim derivatively.”<sup>224</sup> Because HMIT would lack derivative standing to bring claims on behalf of the parent Claimant Trust,<sup>225</sup> it also would lack standing to bring a double derivative action.

c) Finally, HMIT Would Also Lack Prudential Standing under Applicable Law to Bring the Proposed Claims As *Direct* Claims.

HMIT argues that it has “direct” standing to pursue the Proposed Claims on behalf of itself, individually.<sup>226</sup> But just because HMIT asserts that some or even all of the Proposed Claims are direct, not derivative claims, does not make it so: “a claim is not ‘direct’ simply because it is pleaded that way.”<sup>227</sup> Rather, in determining whether claims are direct or derivative, a court must “look at the substance of the Petition, and the nature of the wrongs alleged therein, rather than the Plaintiffs’ characterization.”<sup>228</sup> And, under Delaware law, “whether a claim is solely derivative or

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*SkyPort Global Commcn’s, Inc.*), 2011 WL 111427, at \*25–26 (Bankr. S.D. Tex. Jan. 13, 2011) (holding that pre-petition shareholders “lack standing to bring a derivative claim” under Delaware law because they “had their equity interests in the company extinguished pursuant to the merger under the Plan”); *In re WorldCom, Inc.*, 351 B.R. 130, 134 (Bankr. S.D.N.Y. 2006) (“[T]he cancellation of WorldCom shares under the Plan ... prevents the required continuation of shareholder status through the litigation.”) (cleaned up).

<sup>223</sup> *Lambrecht v. O’Neal*, 3 A.3d 277, 282 (Del. 2010).

<sup>224</sup> *Sagarra*, 34 A.3d at 1079–81 (capitalization omitted) (citing *Lambrecht*, 3 A.3d at 282).

<sup>225</sup> *See supra* pp. 80-82.

<sup>226</sup> *See e.g.*, Motion for Leave ¶ 10 (“HMIT has individual standing to bring this action because Seery owed fiduciary duties directly to HMIT at that time . . . .”); *id.* ¶ 67 (arguing that “HMIT has [d]irect [s]tanding”); Proposed Complaint ¶ 24 (“HMIT has constitutional standing and capacity to bring these claims both individually and derivatively.”).

<sup>227</sup> *Schmermerhorn*, 2011 WL 111427, at \*26 (quoting *Gatz v. Ponsoldt*, 2004 WL 3029868 at \*7 (Del. Ch. Nov. 5, 2004)).

<sup>228</sup> *See id.* (citing *Armstrong v. Capshaw, Goss & Bowers LLP*, 404 F.3d 933, 936 (5th Cir. 2005)); *see also Moore v. Simon Enters., Inc.*, 919 F.Supp. 1007, 1009 (N.D. Tex. 1995)(“The determination of whether a claim is a derivative claim or a direct claim is made by reference to the nature of the wrongs alleged in the complaint, and is not limited by a [party’s] characterization or stated intention.”)(cleaned up).

may continue as a dual-natured claim ‘must turn *solely* on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?’”<sup>229</sup> “In addition, to prove that a claim is direct, a plaintiff ‘must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.’”<sup>230</sup> Similarly, in the bankruptcy context, whether a creditor can assert a claim directly or whether the claim belongs to the estate turns on the nature of the injury for which relief is sought: “[i]f the harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate,” such that “only the bankruptcy trustee has standing to pursue the claim for the estate . . . .”<sup>231</sup> “To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate.”<sup>232</sup>

As a reminder, HMIT argues that the injury it has suffered is a devaluation of its interests in the Claimant Trust by virtue of alleged over-compensation of Seery as the Claimant Trustee. HMIT was unable, when pressed during closing arguments, to identify any other injury. It essentially admitted that the claims trades, in and of themselves, would not have harmed the Claimant Trust, the Reorganized Debtor, or individual stakeholders, including HMIT, *since the Claims Purchasers acquired already allowed unsecured claims, such that the distributions on those claims pursuant to the Plan would be unchanged in the hands of new holders of the claims.*

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<sup>229</sup> *El Paso*, 152 A.3d at 1260 (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004)) (emphasis in original).

<sup>230</sup> *Id.* (quoting *Tooley*, 845 A.2d at 1033); see also *Schmermerhorn*, 2011 WL 111427, at \*24 (same).

<sup>231</sup> *Meridian Cap. CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (citing 11 U.S.C. § 541(a)(1)).

<sup>232</sup> *Id.*; see also *Schertz-Cibolo-Universal City Indep. Sch. Dist. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994) (“If a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate.”)(citations omitted).

Thus, by its own concessions, any alleged harm to HMIT (through devaluation of assets in the Claimant Trust) “comes about only because of harm to the debtor,” so the alleged “injury is derivative.”<sup>233</sup> The court concludes that all of the claims set forth in the Proposed Complaint allege derivative claims only, and that none would be direct claims against the Proposed Defendants. Thus, HMIT would lack prudential standing to bring any of the Proposed Claims in the Proposed Complaint, so its Motion for Leave should be denied.

d) Some Final Points Regarding Standing.

In this standing discussion, one should not lose sight of the fact that there are both procedural safeguards in place, as well as certain independent individuals in place with fiduciary duties that might act in the event of any shenanigans regarding Claimant Trust activities. Under section 4.1 of the CTA (approved as part of the Plan process), the CTOB, which includes an independent disinterested member in addition to representatives of the Claims Purchasers,<sup>234</sup> oversees the Claimant Trustee’s performance of his duties, approves his compensation, and may remove him for cause. Moreover, there is a separate “Litigation Trustee” in this case who was brought in, post-confirmation, as an independent fiduciary to pursue claims and causes of action. These independent persons are checks and balances in the post-confirmation wind down of Highland. This is what creditors voted on in connection with the Plan. Seery and the Claims Purchasers are not in sole control of anything. The CTA, as well as Delaware law, very clearly set forth who can bring an action in the event of some colorable claim. This is the reality of prudential

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<sup>233</sup> *Meridian*, 912 F.3d at 293–94 (“The creditors’ injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties.”); *see also El Paso*, 152 A.3d at 1260–61 & n.60 (holding that claim “claims of corporate overpayment are normally treated as causing harm solely to the corporation and, thus, are regarded as derivative”) (collecting cases); *Gerber v EPE Holdings, LLC*, 2013 WL 209658, at \*12 (Del. Ch. Jan. 18, 2013) (holding that claims were derivative because plaintiff had “not identified any independent harm suffered by the limited partners”; “the partnership suffered all the harm at issue—it paid too much”).

<sup>234</sup> *See supra* note 23 and accompanying text.

standing. Just as in the *Abraugh* case, where Louisiana law dictated that a mother could not bring a wrongful death case when the deceased prisoner had a surviving wife and child, Delaware law and the CTA dictate here that a contingent beneficiary cannot bring the Proposed Claims here. This is separate and apart from whether the claims are colorable.

*C. Are the Proposed Claims “Colorable”?*

1. What is the Proper Standard of Review for a “Colorability” Determination?

Although the court has determined that HMIT would *not* have standing (constitutional or prudential) to bring the Proposed Claims, this court will nevertheless evaluate whether the claims—assuming HMIT somehow has standing—might be “colorable.” This, in turn, requires the court to assess what the legal standard is to determine if a claim is “colorable.” As a reminder, the Plan’s Gatekeeper Provision and this court’s prior Gatekeeper Orders entered in January and July 2020 each required that, before a party may commence or pursue claims relating to the bankruptcy case against certain protected parties, it must first obtain a finding from the bankruptcy court that its proposed claims are “colorable.” The Gatekeeper Provision and Gatekeeper Orders did not specifically define “colorable” or what type of legal standard should apply.

HMIT argues that the standard for review to be applied by this court is the same as a simple “plausibility” standard used in connection with a Rule 12(b)(6) motions to dismiss. In other words, the court should simply assess whether the allegations of the Proposed Complaint, taken as true and with all inferences drawn in favor of the movant, state a *plausible* claim for relief (i.e., colorable equals plausible), and that this standard does not allow for the weighing of evidence by the court.<sup>235</sup> The Proposed Defendants, however, argue that the test for colorability should be more

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<sup>235</sup> Reply, ¶ 5 (“[T]he determination of ‘colorability’ does not allow the ‘weighing’ of evidence. At most, a Rule 12(b)(6) ‘plausibility’ standard applies.”).

akin to the test applied under the *Barton* doctrine,<sup>236</sup> under which a plaintiff must make a *prima facie* case that a proposed claim against a bankruptcy trustee is “not without foundation.” In this regard, they argue that the court can and should consider evidence outside of the four corners of the complaint—especially since HMIT attached to its Motion for Leave, as “evidence” to support it, two declarations of Dondero (as part of a 350-page attachment) and only attempted to withdraw those declarations after the Highland Parties urged that they be permitted to cross-examine Dondero on them.

This court ultimately determined that the “colorability” standard was somewhat of a mixed question of fact and law and, therefore, the parties could put on evidence at the June 8 Hearing if they so-chose. The court would not require it. It was up to the parties. But, in any event, the Proposed Defendants should have an opportunity to cross-examine Dondero on the statements made in his declarations since the declarations had been filed on the docket and the court had reviewed them at this point. HMIT attempted to withdraw the declarations and any reference to them in the Motion for Leave, by filing redacted versions of the Motion for Leave,<sup>237</sup> less than 72 hours before the June 8 Hearing; however, the redacted versions did not redact any allegations in the Motion for Leave that were purportedly supported by the Dondero declarations. Also, HMIT called Dondero as a direct witness, in addition to calling Seery as an adverse witness at the June 8 Hearing, albeit subject to its running objection to the evidentiary format of the hearing.<sup>238</sup> HMIT also filed a witness and exhibit list attaching 80 exhibits and over 2850 pages of evidence and

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<sup>236</sup> *Barton v. Barbour*, 104 U.S. 126 (1881).

<sup>237</sup> Bankr. Dkt. Nos. 3815 and 3816.

<sup>238</sup> See June 8 Hearing Transcript, 7:20-24, 112:11-13.

moved for the admission of those exhibits at the June 8 Hearing (again, subject to its running objection to the evidentiary format of the hearing).<sup>239</sup>

In determining what appropriate legal standard applies here in the “colorability” analysis, the context in which the Gatekeeper Provision of the Plan was approved seems very relevant. In determining that the Gatekeeper Provision was legal, necessary, and in the best interest of all of the parties, this court set forth in the Confirmation Order a lengthy discussion of the factual support for it, and made specific findings relating to Dondero’s post-petition litigation and the need for inclusion of the Gatekeeper Provision in the Plan.<sup>240</sup> This court observed that “prior to the commencement of the Debtor’s bankruptcy case, and while under the direction of Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade” and that “[d]uring the last several months, Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor.”<sup>241</sup> This court further found that: (1) Dondero’s post-petition litigation “was a result of Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Seery’s credible testimony, that if Dondero’s plan proposal was not accepted, he would ‘burn down the place,’”<sup>242</sup> (2) without the Gatekeeper Provision in place, “Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date” and that “the threat of continued litigation by Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result in lower distributions to creditors because of

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<sup>239</sup> See *Hunter Mountain Investment Trust’s Witness and Exhibit List in Connection with Its Emergency Motion for Leave to File Verified Adversary Proceeding, and Supplement* (“HMIT W&E List”)[Bankr. Dkt. No. 3818] and n.1 thereto; see also June 8 Hearing Transcript, 33:7-10.

<sup>240</sup> See Confirmation Order ¶¶ 76-79.

<sup>241</sup> *Id.* ¶ 77.

<sup>242</sup> *Id.* ¶ 78. See *supra* note 12.

costs and distraction such litigation or the threats of such litigation would cause,”<sup>243</sup> and, (3) “unless the [court] approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance,<sup>244</sup> the absence of which will present unacceptable risks to parties currently willing to serve in such roles.” Thus, as set forth in the Confirmation Order, the Gatekeeper Provision (and the Gatekeeper Orders as well, which were approved based on the same concerns regarding the threat of continued litigation by Dondero and his related entities) required Dondero and related entities to make a threshold showing of colorability, noting that the:

Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).<sup>245</sup>

The Fifth Circuit, in approving the Gatekeeper Provision on appeal, noted that that the Plan injunction and Gatekeeper Provision “screen and prevent bad-faith litigation against Highland Capital, its successors, and other bankruptcy participants that could disrupt the Plan’s effectiveness.”<sup>246</sup>

Again, the court believes it is appropriate to consider the context in which—and the purpose for which—the Gatekeeper Orders and Gatekeeper Provision were entered in assessing

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<sup>243</sup> *Id.*

<sup>244</sup> Asd noted at ¶ 79 of the Confirmation Order, the bankruptcy court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor’s insurance broker (“AON”), regarding his efforts to obtain D&O insurance for the post-confirmation parties implementing the Plan. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so *without an exclusion for claims asserted by Mr. Dondero and his affiliates* required that the Confirmation Order approve the Gatekeeper Provision.

<sup>245</sup> *Id.* ¶ 80.

<sup>246</sup> *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 435 (5th Cir. 2022).

how “colorability” should work here. It seems that applying HMIT’s proposed Rule 12(b)(6) “plausibility” standard would impose no hurdle at all to litigants and would render the threshold for bringing claims under the Gatekeeper Provision and Gatekeeper Orders entirely duplicative of the motion to dismiss standard that every litigant already faces.

The authorities cited by HMIT in support of its argument for applying a Rule 12(b)(6) standard are inapposite. HMIT has cited no authority that addresses the appropriate standard for assessing the “colorability” of claims in the context of a plan gatekeeper provision—specifically, one implemented in response to a demonstrated need to screen and prevent continued bad-faith, harassing litigation against a chapter 11 debtor that would impede the debtor’s implementation of a plan, which is what we have here. HMIT relies on a bevy of cases that include benefits coverage disputes under ERISA, Medicare coverage disputes, and constitutional challenges<sup>247</sup>—none of which implicate the *Barton* doctrine and vexatious-litigant concerns that were referenced by the court in the Plan as justifications for the gatekeeping provisions at issue here.

In affirming the Plan’s Gatekeeper Provision, the Fifth Circuit stated, “Courts have long recognized bankruptcy courts can perform a gatekeeping function” and noted, by way of example, that “[u]nder the ‘*Barton* doctrine,’ the bankruptcy court may require a party to ‘obtain leave of

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<sup>247</sup> See *Gonzales v. Columbia Hosp. at Med. City Dallas Subsidiary, L.P.*, 207 F. Supp. 2d 570, 577 (N.D. Tex. 2002) (assessing whether an employee has “a colorable claim to vested benefits” such that the employee may be considered a “participant” under ERISA); *Abraham v. Exxon Corp.*, 85 F.3d 1126, 1129 (5th Cir. 1996) (same); *Panaras v. Liquid Carbonic Indus. Corp.*, 74 F.3d 786, 790 (7th Cir. 1996) (same); *Lake Eugenie Land & Dev., Inc. v. BP Expl. & Prods. (In re Deepwater Horizon)*, 732 F.3d 326, 340 (5th Cir. 2013) (holding that claims administrator incorrectly interpreted class settlement agreement by permitting “claimants [with] no colorable legal claim” to receive awards); *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984) (discussing whether criminal defendant’s double jeopardy claim was “colorable” such that it could be appealed before final judgments); *Trippodo v. SP Plus Corp.*, 2021 WL 2446204, at \*3 (S.D. Tex. June 15, 2021) (assessing whether plaintiff stated a “colorable claim” against proposed additional defendants in determining whether plaintiff could amend complaint); *Reyes v. Vanmatre*, 2021 WL 5905557, at \*3 (S.D. Tex. Dec. 13, 2021) (same); *Family Rehab., Inc. v. Azar*, 886 F.3d 496, 504 n.15 (5th Cir. 2018) (assessing whether plaintiff raised a “colorable claim” to warrant the district court’s exercise of jurisdiction over a Medicare coverage dispute); *Am. Med. Hospice Care, LLC v. Azar*, 2020 WL 9814144, at \*5 (W.D. Tex. Dec. 9, 2020) (same); *Harry v. Colvin*, 2013 WL 12174300, at \*5 (W.D. Tex. Nov. 6, 2013) (considering whether plaintiff asserted a “colorable constitutional claim” such that the court could exercise jurisdiction); *Sabhari v. Mukasey*, 522 F.3d 842, 844 (8th Cir. 2008) (same); *Stanley v. Gonzales*, 476 F.3d 653, 657 (9th Cir. 2007) (same).

the bankruptcy court before initiating an action in district court when the action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor’s official capacity.”<sup>248</sup> As noted above, the Fifth Circuit found that the Gatekeeper Provision, which “requires that, before any lawsuit is filed, the plaintiff must seek the bankruptcy court’s approval of the claim as ‘colorable’”—*i.e.*, to “screen and prevent bad-faith litigation,”—is “sound.”<sup>249</sup>

On balance, the court views jurisprudence applying the *Barton* doctrine and vexatious litigant injunctions—while not specifically addressing the “colorability” standard under gatekeeping provisions in a plan<sup>250</sup>—as more informative on how to approach “colorability” than any of the other authorities presented by the parties. One example is *In re VistaCare Group, LLC*.<sup>251</sup>

In *VistaCare*, the Third Circuit noted that, under the *Barton* doctrine, “[a] party seeking leave of court to sue a trustee must make a prima facie case against the trustee, showing that its claim is not without foundation,” and emphasized that the “not without foundation” standard, while similar to the standard courts apply in evaluating Rule 12(b)(6) motions to dismiss, “involves a greater degree of flexibility” than a Rule 12(b)(6) motion to dismiss because “the bankruptcy court, which given its familiarity with the underlying facts and the parties, is uniquely situated to determine whether a claim against the trustee has merit,” and “is also uniquely situated to determine the potential effect of a judgment against the trustee on the debtor’s estate.”<sup>252</sup> To satisfy the “*prima facie* case standard,” “the movant must do more than meet the liberal notice-pleading

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<sup>248</sup> *Id.* at 438 (cleaned up).

<sup>249</sup> *Id.* at 435.

<sup>250</sup> The court acknowledges that the *Barton* doctrine itself would not be directly applicable here because HMIT is proposing to bring the Proposed Complaint in the bankruptcy court – the “appointing” court of Seery.

<sup>251</sup> 678 F.3d 218 (3d Cir. 2012).

<sup>252</sup> *Id.* at 232-233 (cleaned up).

requirements of Rule 8.”<sup>253</sup> “[I]f the [bankruptcy] court relied on mere notice-pleading standards rather than evaluating the merits of the allegations, the leave requirement would become meaningless.”<sup>254</sup> This court agrees with the notion, that “[t]o apply a less stringent standard would eviscerate the protections” of the Gatekeeper Provision and Gatekeeper Orders.<sup>255</sup> The court notes, as well, that courts in the *Barton* doctrine context regularly hold evidentiary hearings on motions for leave to determine if the proposed complaint meets the necessary threshold for pursuing litigation. The Third Circuit in *VistaCare* noted that “[w]hether to hold a hearing [on a motion for leave to bring suit against a trustee] is within the sound discretion of the bankruptcy court,”<sup>256</sup> and that “the decision whether to grant leave may involve a ‘balancing of the interests of all parties involved,’” which will ordinarily require an evidentiary hearing.<sup>257</sup> The Third Circuit applied “the deferential abuse of discretion standard” in considering whether the bankruptcy court’s granting of leave should be affirmed on appeal.<sup>258</sup>

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<sup>253</sup> *In re World Mktg. Chi., LLC*, 584 B.R. 737, 743 (Bankr. N.D. Ill. 2018) (cleaned up; collecting cases).

<sup>254</sup> *Leighton Holdings, Ltd. v. Belofsky (In re Kids Creek Partners, L.P.)*, 2000 WL 1761020, at \*2 (N.D. Ill. Nov. 30, 2000).

<sup>255</sup> *World*, 584 B.R. at 743 (quoting *Leighton*, 2000 WL 1761020, at \*2).

<sup>256</sup> *VistaCare*, 678 F.3d at 232 n.12.

<sup>257</sup> *Id.* at 233 (quoting *In re Kashani*, 190 B.R. 875, 886–87 (9th Cir. BAP 1995)). The Third Circuit noted that the bankruptcy court’s holding of an evidentiary hearing on the motion for leave was appropriate (though not required in every case)). *Id.* at 232 n.12.

<sup>258</sup> *Id.* at 224 (“We review a bankruptcy court’s decision to grant a motion for leave to sue a trustee under the deferential abuse of discretion standard.”) (citing *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); *In re Beck Indus., Inc.*, 725 F.2d 880, 889 (2d Cir. 1984)). Courts of appeal routinely apply the deferential abuse of discretion standard to a bankruptcy court’s decision regarding whether leave should be granted to sue a trustee. Although the Fifth Circuit has not squarely addressed this issue, all nine Circuits that have considered this issue have also adopted an abuse-of-discretion standard. *See In re Bednar*, 2021 WL 1625399, at \*3 (B.A.P. 10th Cir. Apr. 27, 2021) (“[T]he Bankruptcy Court’s decision to decline leave to sue the Trustee under the *Barton* doctrine is reviewed for abuse of discretion . . . .”) (citing *VistaCare*); *SEC v. N. Am. Clearing, Inc.*, 656 F. App’x 969, 973–74 (11th Cir. 2016) (“Although we have never determined the standard of review for a challenge to the denial of a *Barton* motion, other Circuits that have considered the issue review a lower court’s ruling on a *Barton* motion for an abuse of discretion.”) (citing *VistaCare*); *In re Lupo*, 2014 WL 4653064, at \*3 (B.A.P. 1st Cir. Sept. 17, 2014) (“Appellate courts review a bankruptcy court’s decision to deny a motion for leave to sue under the abuse of discretion standard.”) (citing *VistaCare*); *Grant, Konvalinka & Harrison, PC v. Banks (In re McKenzie)*, 716 F.3d 404, 422 (6th Cir. 2013) (holding that abuse-of-discretion standard applies to *Barton* doctrine); *Alexander v. Hedback*, 718 F.3d 762 (8th Cir. 2013) (applying abuse-of-discretion standard to *Barton* doctrine).

The Fifth Circuit has affirmed a bankruptcy court’s conducting of an evidentiary hearing, in the context of applying a *Barton* doctrine analysis as to a proposed lawsuit against a trustee, without any concern that the inquiry was somehow improper.<sup>259</sup>

Similarly, courts in the vexatious litigant context, where there was an injunction requiring a movant to seek leave to pursue claims, have required movants to “show that the claims sought to be asserted have sufficient merit,” including that “the proposed filing is both procedural and legally sound,” and “that the claims are not brought for any improper purpose, such as harassment.”<sup>260</sup> “For a pre-filing injunction to have the intended impact, it must not merely require a reviewing official to apply an already existing level of review,” such as the “plausibility” standard for a Rule 12(b)(6) motion.<sup>261</sup> Rather, courts apply “an additional layer of review,” and “may appropriately deny leave to file when even part of the pleading fails to satisfy the reviewer that it warrants a federal civil action” or that the “litigant’s allegations are unlikely,” especially “when prior cases have shown the litigant to be untrustworthy or not credible . . . .”<sup>262</sup>

In summary, the court rejects HMIT’s positions: (a) that it need only show, at most, that the allegations in the Proposed Complaint are “plausible” under the Rule 12(b)(6) standard for motions to dismiss; and (b) that this court improperly conducted an evidentiary hearing on the Motion for Leave (i.e., that consideration of evidence in this context is impermissible). The court notes, again, that HMIT’s argument that this court is not permitted to consider evidence in making its “colorability” determination is completely contradictory to HMIT’s actions in filing the Motion

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<sup>259</sup> See *Howell v. Adler (In re Grodsky)*, 2019 WL 2006020, at \*4 (Bankr. E.D. La. Apr. 11, 2019) (dismissing an action under *Barton* after “a close examination” by the bankruptcy court of the evidence regarding the trustee’s actions and finding that “the plaintiffs’ allegations are not based in fact”), *aff’d* 799 F. App’x 271 (5th Cir. 2020).

<sup>260</sup> *Silver v. City of San Antonio*, 2020 WL 3803922, at \*1 (W.D. Tex. July 7, 2020) (denying leave to file lawsuit); see also *Silver v. Perez*, 2020 WL 3790489, at \*1 (W.D. Tex. July 7, 2020) (same).

<sup>261</sup> *Silver*, 2020 WL 3803922, at \*6.

<sup>262</sup> *Id.*

for Leave, where it attached two Dondero declarations as part of 350 pages of “objective evidence” that “supported” its motion.

The court concludes that the appropriate standard to be applied in making its “colorability” determination in *this* bankruptcy case, in the exercise of its gatekeeping function pursuant to the two Gatekeeper Orders and the Gatekeeper Provision in *this* Plan, is a broader standard than the “plausibility” standard applied to Rule 12(b)(6) motions to dismiss. It is, rather, a standard that involves *an additional level of review*—one that places on the proposed plaintiff a burden of making a prima facie case that its proposed claims are *not without foundation*, are *not without merit*, and are *not being pursued for any improper purpose such as harassment*. Additionally, this court may, and should, take into consideration its *knowledge* of the *bankruptcy proceedings* and *the parties* and any additional evidence presented at the hearing on the Motion for Leave. For ease of reference, the court will refer to this standard of “colorability” as the “Gatekeeper Colorability Test.” The court considers this test as a sort of hybrid of what the *Barton* doctrine contemplates and what courts have applied when considering motions to file suit when a vexatious litigant bar order is in place.

2. HMIT’s Proposed Complaint Does Not Present “Colorable” Claims Under this Court’s Gatekeeper Colorability Test or Even Under a Rule 12(b)(6) “Plausibility” Standard.

The court finds, in the exercise of its gatekeeping function under the Gatekeeper Orders and the Gatekeeping Provision in the Plan, that the Motion for Leave should be denied as the claims set forth in the Proposed Complaint are not “colorable” claims. The court makes this determination after considering evidence admitted at the June 8 Hearing, including the testimony of Dondero, Patrick, and Seery, and the numerous exhibits offered by HMIT and the Highland Parties. HMIT’s Proposed Claims lack foundation, are without merit, and appear to be motivated by the improper purposes of vexatiousness and harassment. But, even under the less stringent

“plausibility” standard under Rule 12(b)(6) motions to dismiss, where all allegations must be accepted as true, HMIT’s “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” fail to “[c]ross the line from conceivable to plausible.”<sup>263</sup>

HMIT makes unsubstantiated and conclusory allegations in its Motion for Leave and Proposed Complaint that the Claims Purchasers purchased the large allowed unsecured claims only because Seery, while he was CEO of Highland prior to the Effective Date of the Plan, provided them with MNPI and assurances that the Purchased Claims were very valuable. This was allegedly in exchange for their agreement to approve, in their future capacities as members of the CTOB, excessive compensation for Seery in his capacity as the Claimant Trustee after the Effective Date of the Plan. This was an alleged *quid pro quo* that HMIT claims establishes Seery’s breach of fiduciary duties and the Claims Purchasers’ conspiracy to participate in that breach. As discussed below, these allegations are unsubstantiated and conclusory allegations, and they do not support the inferences that HMIT needs the court to make when it analyzes whether the Proposed Claims are “colorable”—or even merely plausible.

a) HMIT’s Proposed Breach of Fiduciary Duties Claim Set Forth in Count I of the Proposed Complaint

Based on HMIT’s Proposed Complaint and the evidence admitted at the June 8 Hearing, the court finds that HMIT has not pleaded facts that would support a “colorable” breach of fiduciary duties claim against Seery, under this court’s Gatekeeper Colorability Test, nor a plausible claim pursuant to the Rule 12(b) standard. HMIT alleges that Seery breached his fiduciary duties (i) “[b]y disclosing material non-public information to Stonehill and Farallon”

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<sup>263</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 679–80 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

before their purchase of certain Highland claims, and (ii) by receiving “compensation paid to him under the terms of the [CTA] since the Effective Date of the Plan in August 2021.”<sup>264</sup>

As earlier noted, both the Reorganized Debtor and the Claimant Trust are organized under Delaware law and, thus, its proposed Count I against Seery for breach of fiduciary duties to these entities is governed by Delaware law under the “Internal Affairs Doctrine.”<sup>265</sup> Under Delaware law, “[t]o bring a claim for breach of fiduciary duty, a plaintiff must allege ‘(1) that a fiduciary duty existed and (2) that the defendant breached that duty.’”<sup>266</sup> HMIT fails to plausibly or sufficiently allege either element such that its breach of fiduciary duty claims against Seery could survive.

Under Delaware law, officers and directors generally owe fiduciary duties only to the entity and its stakeholders as a whole, not to individual shareholders.<sup>267</sup> Because Seery did not owe any “duty” to HMIT directly and individually, the Proposed Complaint fails to state a claim for breach of fiduciary duties to HMIT. HMIT’s “legal conclusion[.]” that Seery “owed fiduciary duties to HMIT, as equity, and to the Debtor’s Estate”<sup>268</sup> “do[es] not suffice” to plausibly allege the existence of any actionable fiduciary relationship.<sup>269</sup> And as discussed earlier in the standing section, HMIT does not have standing to assert a breach of fiduciary claim derivatively on behalf

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<sup>264</sup> Proposed Complaint ¶¶ 64–67.

<sup>265</sup> Motion for Leave, ¶ 21 and n.24; *see also* Plan Art. XII.M (“corporate governance matters . . . shall be governed by the laws of the state of organization” of the respective entity); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas, S.A.*, 34 A.3d 1074, 1081–82 (Del. 2011) (“In American corporation law, the internal affairs doctrine is a dominant and overarching choice of law principle.”). The Reorganized Debtor and the Claimant Trust are both organized under the laws of Delaware.

<sup>266</sup> *Brooks v. United Dev. Funding III, L.P.*, 2020 WL 6132230, at \*30 (N.D. Tex. Apr. 15, 2020) (quoting *Joseph C. Bamford & Young Min Ban v. Penfold, L.P.*, 2020 WL 967942, at \*8 (Del. Ch. Feb. 28, 2020)).

<sup>267</sup> *See Gilbert v El Paso Co.*, 1988 WL 124325, at \*9 (Del. Ch. Nov. 21, 1988) (“[D]irectors’ fiduciary duty runs to the corporation and to the entire body of shareholders generally, as opposed to specific shareholders or shareholder subgroups.”) *aff’d*, 575 A.2d 1131 (Del. 1990); *Klaassen v Allegro Dev. Corp.*, 2013 WL 5967028, at \*11 (Del. Ch. Nov. 7, 2013) (same).

<sup>268</sup> Proposed Complaint ¶ 63.

<sup>269</sup> *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

of the Claimant Trust or Reorganized Debtor. But even if HMIT had sufficiently alleged the existence of a fiduciary duty by Seery to HMIT—or to the Reorganized Debtor or Claimant Trust that HMIT would have standing to assert—Seery’s alleged communications with Farallon would not have breached those duties.

HMIT alleges that Seery “disclose[d] material non-public information to Stonehill and Farallon,” and they “acted on inside information and Seery’s secret assurances of great profits.”<sup>270</sup> But the Proposed Complaint does not make any factual allegations regarding HMIT’s “conclusory allegations,” and its “legal conclusions” are “purely speculative, devoid of factual support,” and therefore “stop[] short of the line between possibility and plausibility of entitlement to relief”<sup>271</sup> (and certainly stop short of being “colorable”). HMIT never alleges when any of these purported communications occurred, what material non-public information Seery provided, and what “assurances of great profits” he made to Farallon or to Stonehill. At the June 8 Hearing, Dondero could only clarify that he believed the MGM Email to have been MNPI and that he *believed* that Seery *must have* communicated that MNPI to Farallon at some point between December 17, 2020 (the date the MGM Email was sent) and May 28, 2021 (the day that Dondero alleges to have had three telephone calls with representatives of Farallon, Messrs. Patel and Linn, regarding Farallon’s purchase of the bankruptcy claims). Dondero alleges that, during these phone calls, Patel and Linn gave Dondero no reason for their purchase of the claims that “made [any] sense.” Dondero and Patrick also both testified that neither of them had any personal knowledge: (a) of a *quid pro quo* arrangement between Seery and the Claims Purchasers, (b) of Seery having actually communicated any information from the MGM Email to Farallon, or (c) whether Seery’s post-Effective Date compensation had or had not been negotiated in an arms’ length transaction. Dondero only

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<sup>270</sup> Proposed Complaint ¶¶ 3, 64; *see also id.* ¶¶ 13–14, 40, 47, 50.

<sup>271</sup> *Reed v. Linehan (In re Soporex, Inc.)*, 463 B.R. 344, 367, 386 (Bankr. N.D. Tex. 2011) (cleaned up).

speculates regarding these things, because it “made no sense” to him that the Claims Purchasers would have acquired the bankruptcy claims without having received the MNPI. But HMIT admits in the Proposed Complaint that Farallon and Stonehill purchased the Highland claims at discounts of 43% to 65% to their allowed amounts. Thus, they would receive at least an 18% return based on publicly available estimates in Highland’s court-approved Disclosure Statement.<sup>272</sup> The evidence established that, if the acquisition of the UBS claims is excluded—recall that the UBS claims were not purchased until August 2021, which was after the May 28, 2021 phone calls that Dondero made to Farallon personnel—the Claims Purchasers would have expected to net over \$33 million in profits, or nearly a 30% return on their investment, had Highland met its projections (this is based on the aggregate purchase price of \$113 million for the non-UBS claims purchased in the Spring 2021).

To be clear, the only purported MNPI identified in HMIT’s Proposed Complaint was the MGM Email Dondero sent to Seery containing “information regarding Amazon and Apple’s interest in acquiring MGM.” But, the evidence showed that this information was widely reported in the financial press at the time. Thus, it could not have constituted MNPI as a matter of law.<sup>273</sup> Moreover, the evidence showed that Dondero *did not* communicate in the MGM Email the actual inside information that he claimed to have obtained as a board member of MGM—which was that Amazon had met MGM’s “strike price” and that the MGM board was going into exclusive negotiations with Amazon to culminate the merger with them (and, thus, Apple was no longer considered a potential purchaser). Dondero admitted that he included Apple in the MGM Email for the purpose of making it look like there was a competitive process still ongoing. In other

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<sup>272</sup> Proposed Complaint ¶¶ 3, 37, 42.

<sup>273</sup> See, e.g., *SEC v. Cuban*, 2013 WL 791405, at \*10–11 (N.D. Tex. Mar. 5, 2013) (holding that information is not “material, nonpublic information” and “becomes public when disclosed to achieve a broad dissemination to the investing public”) (quoting *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997)).

words, the MGM Email, at the very least, did not include MNPI and, at worst, was deceptive regarding the status of the negotiations between MGM and potential purchasers.

As to HMIT's allegations that Seery's post-Effective Date compensation is "excessive" and that the negotiations between Seery and the CTOB "were not arm's-length,"<sup>274</sup> the evidence at the June 8 Hearing reflected that the allegations are completely speculative, without any foundation whatsoever, and lack merit. And they are also simply not plausible. HMIT fails to allege facts in the Proposed Complaint that would support a reasonable inference that Seery breached his fiduciary duty to HMIT or the estate as a result of bad faith, self-interest, or other intentional misconduct rising to the level of a breach of the duty of loyalty.<sup>275</sup>

b) HMIT's Proposed Claims Set Forth in Counts II (Knowing Participation in Breach of Fiduciaries) and III (Conspiracy)

HMIT seeks to hold the Claims Purchasers secondarily liable for Seery's alleged breach of fiduciaries duties on an aiding and abetting theory in Count II of the Proposed Complaint<sup>276</sup> and, along with Seery, on a civil conspiracy theory of liability in Count III of the Proposed Complaint.<sup>277</sup> Because HMIT's breach of fiduciary duties claim is governed by Delaware law, its aiding and abetting breach of fiduciary duties claim against the Claims Purchasers (Count II) is also governed by Delaware law.<sup>278</sup> HMIT's conspiracy cause of action against the Claims

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<sup>274</sup> Proposed Complaint ¶¶ 4, 13, 54, 74.

<sup>275</sup> See *Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (dismissing claim for breach of duty of loyalty against a director where "conclusory allegations" failed to give rise to inference that director failed to perform fiduciary duties); *McMillan v. Intercargo Corp.*, 768 A.2d 492, 507 (Del. Ch. 2000) (dismissing claim for breach of fiduciary duty where "[a]lthough the complaint makes the conclusory allegation that the defendants breached their duty of disclosure in a 'bad faith and knowing manner,' no facts pled in the complaint buttress that accusation.").

<sup>276</sup> Proposed Complaint ¶¶ 69-74.

<sup>277</sup> Proposed Complaint ¶¶ 75-81.

<sup>278</sup> See *Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas).

Purchasers and Seery (Count III), on the other hand, does not involve a matter of “internal affairs” or of corporate governance, so it is governed by Texas law under the Plan.<sup>279</sup>

As an initial matter, because HMIT does not present either a “colorable”—or even plausible claim—that Seery breached his fiduciary duties, it cannot show that it has alleged a “colorable” or plausible claim for secondary liability for the same alleged wrongdoing.<sup>280</sup> In addition, HMIT’s civil conspiracy claim against the Claims Purchasers and Seery is based entirely on Dondero’s speculation and unsupported inferences and, thus, HMIT has not “colorably” alleged, or even plausibly alleged, its conspiracy claim. Under Texas law, “civil conspiracy is a theory of vicarious liability and not an independent tort.”<sup>281</sup> “[T]he elements of civil conspiracy [are] “(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result.”<sup>282</sup> While HMIT alleges that “Defendants conspired with each other to unlawfully breach fiduciary duties,”<sup>283</sup> it is simply a “legal conclusion” and not the kind of allegation that the court must assume to be true even for purposes of determining plausibility under a motion to dismiss.<sup>284</sup>

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<sup>279</sup> *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M)(which provides for the application of Texas law to “the rights and obligations arising under this Plan” except for “corporate governance matters.”)

<sup>280</sup> *See English v. Narang*, 2019 WL 1300855, at \*14 (Del. Ch. Mar. 20, 2019) (“As a matter of law and logic, there cannot be secondary liability for aiding and abetting an alleged harm in the absence of primary liability.”) (cleaned up; collecting cases); *Hill v. Keliher*, 2022 WL 213978, at \*10 (Tex. App. Jan. 25, 2022) (“[A] defendant’s liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.”) (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)). Because HMIT’s breach of fiduciary duty claim is governed by Delaware law, its aiding and abetting theory of liability is also governed by Delaware law. *See Xtreme Power Plan Tr. v. Schindler (In re Xtreme Power)*, 563 B.R. 614, 632, 645 (Bankr. W.D. Tex. 2016) (applying Delaware law to claim for aiding and abetting breach of fiduciary duty involving Delaware corporation headquartered in Texas). By contrast, “conspiracy is not an internal affair” or a matter of corporate governance, so it is governed by Texas law under the Plan. *Klinek v. LuxeYard, Inc.*, 596 S.W.3d 437, 450 n.9 (Tex. App. – Houston [14th Dist.] 2020) (applying Delaware law to fiduciary duty claim and Texas law to conspiracy theory); (Plan Art. XII.M).

<sup>281</sup> *Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019).

<sup>282</sup> *Id.* at 141 (cleaned up).

<sup>283</sup> Proposed Complaint ¶ 76.

<sup>284</sup> *Iqbal*, 556 U.S. at 680 (citing *Twombly*, 555 U.S. at 565–66).

HMIT repeats four times that Seery provided MNPI to Farallon and Stonehill as a “as a *quid pro quo*” for “additional compensation,”<sup>285</sup> each time based upon conclusory allegations based “upon information and belief” and, frankly, pure speculation from Dondero that his imagined “scheme,” “covert *quid pro quo*,” and secret “conspiracy” between Seery, on the one hand, and Farallon and Stonehill, on the other,<sup>286</sup> **must have** occurred because “[i]t made no sense for the [Claims] Purchasers to invest millions of dollars for assets that – per the publicly available information – did not offer a sufficient potential profit to justify the publicly disclosed risk” (i.e., “[t]he counter-intuitive nature of the purchases at issue compels the conclusion that the [Claims] Purchasers acted on inside information and Seery’s assurance of great profits.”)<sup>287</sup> Importantly, HMIT admits that the Claims Purchasers would have turned a profit based on the information available to them at the time of their acquisitions of the Purchased Claims.<sup>288</sup> HMIT’s allegations about the level of potential profits were contradicted by their own allegations and other evidence admitted at the June 8 Hearing. But Dondero’s speculation about what level of projected return would be sufficient to justify the acquisition of the claims by the Claims Purchasers, or any other third-party investor, does not give rise to a plausible inference that they acted improperly.<sup>289</sup> Thus, HMIT cannot meet

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<sup>285</sup> Proposed Complaint ¶ 77; *see also id.* ¶¶ 4, 47, 74.

<sup>286</sup> *See id.* ¶ 3 (“Thus, acting within a cloak of secrecy, Seery provided close business acquaintances, the other Defendants with material non-public information concerning the value of assets which they then used to purchase the largest approved unsecured claims.”).

<sup>287</sup> *Id.*

<sup>288</sup> *See, e.g., id.* ¶ 3 (alleging that acquiring the claims “did not offer a **sufficient** potential profit to justify the publicly disclosed risk”)(emphasis added); ¶ 43 (“Furthermore, although the publicly available projections suggested only a small margin of error on any profit potential for its significant investment . . . .”); ¶ 49 (“Yet, in this case, it would have been *impossible* for Stonehill and Farallon (in the absence of inside information) to forecast *any significant* profit at the time of their multi-million-dollar investments given the publicly available, negative financial information.”) (third emphasis added).

<sup>289</sup> In fact, the court did not allow Mr. Dondero to testify regarding what kind of information a hypothetical investor in bankruptcy claims would require or what level of potential profits would justify the purchase of bankruptcy claims by investors in the bankruptcy claims trading market because he was testifying as a fact witness, not an expert. Thus, the court only allowed Dondero to testify as to what data **he** (or entities he controls or controlled) would rely on, what **his** risk tolerance would have been, and what level of potential profits **he** would have required to purchase an allowed unsecured bankruptcy claim in a post-confirmation situation. June 8 Hearing Transcript, 129:6-130:4.

its burden, under the Gatekeeper Colorability Test, of making a prima facie showing that its allegations do not lack foundation or merit. Nor can it meet a plausibility standard.

In addition, contrary to the Proposed Complaint’s statement that it would have been “*impossible* for Stonehill and Farallon (in the absence of insider information) to forecast *any* significant profit at the time of their multi-million-dollar investments,” the evidence showed there were already reports in the financial press that MGM was engaging with Amazon, Apple, and others in selling its media portfolio, and thus the prospect of an MGM transaction increasing the value of, and return on, the Purchased Claims, “at the time of their multi-million-dollar investments” was publicly available information.<sup>290</sup> HMIT’s suggestion that the Claims Purchasers were in possession of inside information not publicly available when they acquired the Purchased Claims is simply not plausible. Nor is HMIT’s allegation that “[u]pon information and belief” Farallon “conducted no due diligence but relied on Seery’s profit guarantees” plausible. The allegations regarding Farallon not conducting any due diligence are based, again, entirely on Dondero’s speculation and inferences he made from what Patel and Linn (of Farallon) allegedly told him on May 28, 2021; Dondero did not testify that either Patel or Linn ever told him specifically that they had conducted no due diligence. HMIT’s allegations in the Proposed Complaint that *Farallon* “conducted no due diligence,” are based on Dondero’s speculation, unsubstantiated, and contradicted by the testimony of Seery, who testified that emails to him from Linn in June 2020 and later in January 2021 indicated to him that Farallon, at least, had been conducting some level of due diligence in that they had been following and paying attention to the

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<sup>290</sup> The court notes, as well, that the Claim Purchasers acquired the UBS claims in August 2021—approximately two and a half months *after* the announcement of the MGM-Amazon transaction (which was on May 26, 2021)—a fact that HMIT makes no attempt to harmonize with its conspiracy theory that the Claims Purchasers profited from the misuse of MNPI allegedly given to them by Seery.

Highland case.<sup>291</sup> In addition, there are no allegations in the Proposed Complaint regarding whether Stonehill conducted due diligence or not, and Patrick testified that neither he nor HMIT had any personal knowledge of how much due diligence Farallon or Stonehill did prior to acquiring the Purchased Claims.<sup>292</sup> The court finds and concludes that HMIT's allegations of aiding and abetting and conspiracy in Counts II and III of the Proposed Complaint are based on unsubstantiated inferences and speculation, lack internal consistency, and lack consistency with verifiable public facts. Accordingly, HMIT has failed to show that these claims have a foundation and merit and has also failed to show that they are plausible.

- c) HMIT's Proposed Claims Set Forth in Counts IV (Equitable Disallowance), V (Unjust Enrichment and Constructive Trust), and VI (Declaratory Relief) of the Proposed Complaint
  - i. Count IV (Equitable Disallowance).

In Count IV of its Proposed Complaint, HMIT seeks "equitable disallowance" of the claims acquired by Farallon's and Stonehill's special purpose entities Muck and Jessup, "to the extent over and above their initial investment," and, in the alternative, equitable subordination of their claims to all claims and interests, including HMIT's unvested Class 10 Contingent Claimant Trust Interest, "given [their] willful, inequitable, bad faith conduct" of allegedly "purchasing the Claims based on material non-public information" and being "unfairly advantaged" in "earning significant profits on their purchases."<sup>293</sup> As noted above, these remedies are not available to HMIT.<sup>294</sup>

First, HMIT's request to equitably subordinate the Purchased Claims to all claims and interests is not permitted because Bankruptcy Code § 510(c), by its terms, permits equitable

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<sup>291</sup> See June 8 Hearing Transcript, 239:6-21.

<sup>292</sup> See *id.*, 310:19-312:2.

<sup>293</sup> Proposed Complaint ¶¶ 83-87.

<sup>294</sup> See *infra* pages 74-75.

subordination of a *claim to other claims* or an *interest to other interests* but does not permit equitable subordination of a *claim to interests*.

Second, “equitable” disallowance of claims is not an available remedy in the Fifth Circuit pursuant to the *Mobile Steel* case.<sup>295</sup>

Third, reconsideration of an already-allowed claim in a bankruptcy case can only be accomplished through Bankruptcy Code § 502(j), which, pursuant to Federal Rule of Bankruptcy Procedure 9024, allows reconsideration of allowance of a claim that was allowed following a *contest* (which is certainly the case with respect to the Purchased Claims) based on the “equities of the case.” But this is only if the request for reconsideration is made within the one-year limitation prescribed in Rule 60(c) of the Federal Rules of Civil Procedure. HMIT’s request for disallowance of Muck and Jessup’s Purchased Claims (if it could somehow be construed as a request for reconsideration of their claims), is clearly untimely, as it is being made well beyond a year since their allowance by this court following contests and approval of Rule 9019 settlements. Thus, the court finds that HMIT has not alleged a colorable or even plausible claim in Count IV of the Proposed Complaint and, therefore, the Motion for Leave should be denied.

ii. Count V (Unjust Enrichment and Constructive Trust)

In Count V of the Proposed Complaint, HMIT alleges that, “by acquiring the Claims using [MNPI], Stonehill and Farallon were unjustly enriched and gained an undue advantage over other creditors and former equity” and that “[a]llowing [the Claims Purchasers] to retain their ill-gotten benefits would be unconscionable;” thus, HMIT alleges, the Claims Purchasers “should be forced to disgorge all distributions over and above their original investment in the Claims as restitution for their unjust enrichment” and “a constructive trust should be imposed on such proceeds . . . .”<sup>296</sup>

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<sup>295</sup> *In re Mobile Steel Co., Inc.*, 563 F.2d 692 (5th Cir. 1977).

<sup>296</sup> Proposed Complaint ¶¶ 89-93.

HMIT alleges further that “Seery was also unjustly enriched by his participation in this scheme and he should be required to disgorge or restate all compensation he has received from the outset of his collusive activities” and “[a]lternatively he should be required to disgorge and restate all compensation received since the Effective Date” over which a constructive trust should be imposed.<sup>297</sup> HMIT has not alleged a colorable or even a plausible claim for unjust enrichment or constructive trust in Count V.

Under Texas law,<sup>298</sup> “[u]njust enrichment is not an independent cause of action but rather characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances which give rise to an implied or quasi-contractual obligation to repay.”<sup>299</sup> Thus, “when a valid, express contract covers the subject matter of the parties’ dispute, there can be no recovery under a quasi-contract theory.”<sup>300</sup> Here, as noted above, HMIT’s only alleged injury is a diminution of the value of its unvested Contingent Claimant Trust Interest by virtue of Seery’s allegedly having wrongfully obtained excessive compensation, with the help of the Claims Purchasers. ***Yet Seery’s compensation is governed by express agreements*** (i.e., the Plan and the CTA). Thus, HMIT’s claim based on unjust enrichment is not an available theory of recovery.

iii. Count VI (Declaratory Relief)

HMIT seeks declaratory relief in Count VI of the Proposed Complaint, essentially, that Dondero’s conspiracy theory is correct and that HMIT’s would succeed on the merits with respect

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<sup>297</sup> *Id.* ¶ 94.

<sup>298</sup> Under the Plan, Texas law governs HMIT’s “claim” for unjust enrichment because it is not a “corporate governance matter.” (Plan Art. XII.M.) It also governs HMIT’s “claim” for constructive trust, which “is merely a remedy used to grant relief on the underlying cause of action.” *Sherer v. Sherer*, 393 S.W.3d 480, 491 (Tex. App. 2013).

<sup>299</sup> *Taylor v. Trevino*, 569 F. Supp. 3d 414, 435 (N.D. Tex. 2021) (cleaned up); *see also Yowell v. Granite Operating Co.*, 630 S.W.3d 566, 578 (Tex. App. 2021) (same).

<sup>300</sup> *Taylor*, 569 F. Supp. 3d at 435 (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)).

to the Proposed Claims if it were permitted leave to bring them in an adversary proceeding.<sup>301</sup> But, a request for declaratory relief is not “an independent cause of action”<sup>302</sup> and “in the absence of any underlying viable claims such relief is unavailable.”<sup>303</sup> This court has already found and concluded that HMIT would not have constitutional or prudential standing to bring the underlying causes of action in the Proposed Complaint. This court has also found and concluded that all of the Proposed Claims are without foundation or merit and are not even plausible and are all; being brought for the improper purpose of continuing Dondero’s vexatious, harassing, bad-faith litigation. Thus, HMIT would not be entitled to pursue declaratory judgement relief as requested in Count VI of the Proposed Complaint.

d) HMIT Has No Basis to Seek Punitive Damages

HMIT separately alleges that the Claims Purchasers’ and Seery’s “misconduct was intentional, knowing, willful, in bad faith, fraudulent, and in total disregard of the rights of others,” thus entitling HMIT to an award of punitive damages under applicable law. But, HMIT abandoned its proposed fraud claim that was in its Original Proposed Complaint, so its sole claim for primary liability is Seery’s alleged breach of his fiduciary duties. And under Delaware law, the “court cannot award punitive damages in [a] fiduciary duty action.”<sup>304</sup>

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<sup>301</sup> Proposed Complaint ¶¶ 96-99.

<sup>302</sup> See *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 932 (5th Cir. 2023).

<sup>303</sup> *Green v. Wells Fargo Home Mtg.*, 2016 WL 3746276, at \*2 (S.D. Tex. June 7, 2016) (citing *Collin Cty. v. Homeowners Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 170–71 (5th Cir. 1990)); see also *Hopkins v. Cornerstone Am.*

<sup>304</sup> *Buchwald v. Renco Grp. (In re Magnesium Corp. of Am.)*, 539 B.R. 31, 52 (S.D.N.Y. 2015) (citing *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130, 1154 (Del. Ch. 2006)), *aff’d* 682 F. App’x 24 (2d Cir. 2017).

3. HMIT Does Not Present “Colorable” Claims Under this Court’s Gatekeeper Colorability Test Because It Seeks to Bring the Proposed Complaint for Improper Purposes of Harassment and Bad-Faith, Vexatiousness.

Under this court’s Gatekeeper Colorability Test, in addition to showing that its allegations and claims are not without foundation or merit, HMIT must also show that the Proposed Claims are not being brought for any improper purpose. Taking into consideration the court’s knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, the court finds that HMIT is acting at the behest of, and under the control or influence of, Dondero in continuing to pursue harassing, bad faith, vexatious litigation to achieve his desired result in these bankruptcy proceedings. So, in addition to failing to show that its Proposed Claims have foundation and merit, HMIT cannot show that it is pursuing the Proposed Claims for a proper purpose and, thus, cannot meet the requirements under the Gatekeeper Colorability Test; HMIT’s Motion for Leave should be denied.

#### **IV. CONCLUSION**

The court concludes, having taken into consideration both its knowledge of the bankruptcy proceedings and the parties and the evidence presented at the hearing on the Motion for Leave, that HMIT’s Motion for Leave should be denied for three independent reasons: (1) HMIT would lack constitutional standing to bring the Proposed Claims (and, thus, the federal courts would lack subject matter jurisdiction over the Proposed Claims); (2) even if HMIT would have constitutional standing to pursue the Proposed Claims, it would lack prudential standing to bring the Proposed Claims; and (3) even if HMIT would have both constitutional standing and prudential standing to bring the Proposed Claims, it has not met its burden under the Gatekeeper Colorability Test of showing that its Proposed Claims are “colorable” claims—that the Proposed Claims are not without foundation, not without merit, and not being pursued for an improper purpose. Moreover,

even if this court’s Gatekeeper Colorability Test should be replaced with a Rule 12(b)(6) “plausibility” standard, the Proposed Claims are not plausible.

Accordingly,

**IT IS ORDERED** that HMIT’s Motion for Leave be, and hereby is **DENIED**.

**###End of Memorandum Opinion and Order###**

# Exhibit 3



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 31, 2023

  
United States Bankruptcy Judge

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

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In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.  
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Chapter 11

Case No. 19-34054-sgj11

**ORDER DENYING APPLICATION FOR EXPEDITED HEARING [DE # 3700]**

This Order is issued in response to the *Application for Expedited Hearing on Emergency Motion for Leave to File Verified Adversary Proceeding* (“Expedited Haring Request”) [DE # 3700] filed by Hunter Mountain Investment Trust (“HMIT” or “Movant”) on March 28, 2023, at 4:09 p.m. C.D.T. The Expedited Hearing Request seeks a hearing within three days, or as soon thereafter as counsel can be heard, on HMIT’s *Emergency Motion for Leave to File Verified Adversary Proceeding* (“Motion for Leave”) which was filed on March 28, 2023, at 4:02 p.m. C.D.T.

The court has concluded that no emergency or other good cause exists, pursuant to Fed. R. Bankr. Proc. 9006, and the *Expedited Hearing Request* will be denied. The *Motion for Leave* will be set in the ordinary course (after 21 days’ notice to affected parties)—i.e., after April 18, 2023.

The *Motion for Leave* is 37 pages in length and contains 350 pages of attachments. It seeks leave from the bankruptcy court—pursuant to the bankruptcy court’s “gatekeeping” role<sup>1</sup> under the confirmed Chapter 11 plan of Highland Capital Management, L.P. (“Highland” or “Reorganized Debtor”)—to sue at least the following parties: Muck Holdings, LLC (“Muck”); Jessup Holdings, LLC (“Jessup”); Farallon Capital Management, LLC (“Farallon”); Stonehill Capital Management, LLC (“Stonehill”); James P. Seery, Jr. (“Seery”); and John Doe Defendant Nos. 1-10 (collectively, the “Affected Parties”). The conduct that is described as a basis for the desired lawsuit is certain trading of unsecured claims that occurred in 2021 during the Highland bankruptcy case.<sup>2</sup> It appears that millions of dollars of damages are sought by Movant, who was formerly the largest indirect (ultimate) equity holder of Highland. The legal theories (e.g., breaches of fiduciary duties; fraud; conspiracy; equitable disallowance) are novel in the bankruptcy claims trading context. The bankruptcy court, pursuant to the Highland plan, will need to analyze whether such claims are “colorable” such that leave to sue should be granted.

The Affected Parties—and other parties in interest in the underlying bankruptcy case, for that matter—should be afforded a reasonable opportunity to respond to the *Motion for Leave*.

While Movant, HMIT, has alleged that it may be facing a statute of limitations defense as to

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<sup>1</sup> The bankruptcy court’s “gatekeeping” role was recently affirmed by the Fifth Circuit in *In re Highland Capital Management, L.P.*, 48 F.4th 419, 438 (5th Cir. 2022).

<sup>2</sup> Notice of the claims trading was provided in filings in Highland bankruptcy case, as follows: Claim No. 23 (DE ## 2211, 2212, and 2215), Claim Nos. 190 and 191 (DE ## 2697 and 2698), Claim Nos. 143, 147, 149, 150, 153 and 154 (DE # 2263), Claim No. 81 (DE # 2262), Claim No. 72 (DE # 2261).

some claims after April 16, 2023, it appears that Movant has known about the conduct underlying the desired lawsuit for well over a year, based on activity that has occurred in the bankruptcy court. *See, e.g., Memorandum Opinion and Order Granting James Dondero's Motion to Remand Adversary Proceeding to State Court, Denying Fee Reimbursement Request, and Related Rulings, Dondero v. Alvarez & Marsal CRF Management, LLC and Farallon Capital Management LLC* [DE # 22], in Adv. Proc. # 21-03051 (January 4, 2022). Thus, the need for an emergency hearing is dubious. Accordingly

IT IS ORDERED that the Expedited Hearing Request is denied.

Counsel shall contact the Courtroom Deputy for a setting on the *Motion for Leave*, which setting shall be no sooner than April 19, 2023.

\* \* \* END OF ORDER \* \* \*

# Exhibit 4



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 10, 2023

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
  
Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj

**ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE  
WITH RESPECT TO HUNTER MOUNTAIN INVESTMENT TRUST'S  
EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED  
ADVERSARY PROCEEDING AS SUPPLEMENTED**

The Court conducted a status conference on April 24, 2023, concerning the final scheduling of *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the "Underlying Motion"), as well as whether the hearing on the Underlying Motion would be evidentiary, and the Court having considered (i) the *Opposed Emergency Motion*

**ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER  
MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED  
ADVERARY PROCEEDING AS SUPPLEMENTED**

to Modify and Fix a Briefing Schedule and Set a Hearing Date with Respect to Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3738] (the “Motion”)<sup>1</sup> filed by Highland Capital Management, L.P., and the Highland Claimant Trust; (ii) the Joinder to Highland’s Emergency Motion to Modify and Fix Briefing Schedule and Set Hearing Date with Respect to Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3740] filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management, L.L.C., and Stonehill Capital Management LLC; (iii) the Response and Reservation of Rights [Docket No. 3748] filed by Hunter Mountain Investment Trust; (iv) the Objection Regarding Evidentiary Hearing and Brief Concerning Gatekeeper Proceedings Relating to “Colorability” [Docket No. 3758] filed by Hunter Mountain Investment Trust, and (v) the arguments of counsel,

**IT IS HEREBY ORDERED** that:

1. The hearing on Hunter Mountain Investment Trust’s *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Docket No. 3760] (collectively, the “Underlying Motion”) shall be held in person on **June 8, 2023, at 9:30 a.m. (Central Time)** before the Honorable Stacey G. C. Jernigan, at **1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas**, and by Webex for those interested but not directly participating in the hearing.
2. Any responses to the Underlying Motion shall be filed no later than May 11, 2023.
3. Any replies in support of the Underlying Motion shall be filed no later than May 18, 2023.
4. The Court will advise the parties on or reasonably after May 18, 2023, whether the Court intends to conduct the hearing on an evidentiary basis.

**###End of Order###**

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<sup>1</sup> All capitalized terms used but not defined herein have the meanings given to them in the Motion.

Approved as Form Only:

PARSONS McENTIRE McCLEARY PLLC

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**ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER  
MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED  
ADVERARY PROCEEDING AS SUPPLEMENTED**

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**ORDER FIXING BRIEFING SCHEDULE AND HEARING DATE WITH RESPECT TO HUNTER  
MOUNTAIN INVESTMENT TRUST'S EMERGENCY MOTION FOR LEAVE TO FILE VERIFIED  
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# Exhibit 5



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 22, 2023

  
United States Bankruptcy Judge

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

-----  
In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.  
-----

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER PERTAINING TO THE HEARING ON HUNTER MOUNTAIN INVESTMENT  
TRUST'S MOTION FOR LEAVE TO FILE ADVERSARY PROCEEDING**

**[DE ## 3699 & 3760]**

Based on the court's review of all of the parties' pleadings and briefing relating to the above-referenced motion and supplemental motion ("Motion for Leave"), the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court's required inquiry into whether "colorable" claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include

examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).

**### END OF ORDER ###**

# Exhibit 5a



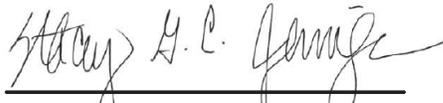
CLERK, U.S. BANKRUPTCY COURT  
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**### END OF ORDER ###**



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TOTAL: 476

# Exhibit 6



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 26, 2023

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.

§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§

**ORDER REGARDING HUNTER MOUNTAIN INVESTMENT TRUST’S EMERGENCY  
MOTION FOR EXPEDITED DISCOVERY OR, ALTERNATIVELY, FOR  
CONTINUANCE OF THE JUNE 8, 2023 HEARING**

**[Dkt. Nos. 3788 and 3791]**

Having considered the *Emergency Motion for Expedited Discovery or, Alternatively, for Continuance of the June 8, 2023 Hearing* of Hunter Mountain Investment Trust (“HMIT”) filed on May 24, 2023, at Dkt. No. 3788 (“Motion for Expedited Discovery”), and, separately, on May 25, 2023, at Dkt. No. 3791 (“Motion for Continuance,” and, together with the Motion for Expedited Discovery, the “Motions”), and the arguments of counsel at the emergency hearing on the Motions held on Friday May 26, 2023, at 9:30 a.m.,

**IT IS ORDERED** that the Motion for Continuance be, and hereby is, **DENIED**;

**IT IS FURTHER ORDERED** that the Motion for Expedited Discovery be, and hereby is, **GRANTED**, in part and only to the extent as set forth below:

- (1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing (“June 8 Hearing”) on HMIT’s *Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. No. 3699] and *Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding* [Dkt. 3760] (together, the “Motion for Leave”), Mr. Seery and Mr. Dondero shall be made available for depositions (“Depositions”) on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and
- (2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena *duces tecum*, or otherwise, prior to the conduct of the Depositions or to the court’s ruling on the Motion for Leave following the June 8, 2023 hearing;

**IT IS FURTHER ORDERED** that, except as specifically set forth in this Order, HMIT’s Motion for Expedited Discovery be, and hereby is, **DENIED**.

**### END OF ORDER ###**

# Exhibit 7



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 16, 2023

  
United States Bankruptcy Judge

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

-----  
In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.  
-----

§  
§  
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§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**MEMORANDUM OPINION AND ORDER GRANTING JOINT MOTION TO  
EXCLUDE EXPERT EVIDENCE [DE # 3820]**

I. **INTRODUCTION.**

BEFORE THIS COURT is yet another dispute in the continuing saga of the Chapter 11 bankruptcy case of Highland Capital Management, L.P. (“Highland” or “Reorganized Debtor”).

The Reorganized Debtor has been operating under a confirmed Chapter 11 plan for approximately two years now—a plan having been confirmed on February 22, 2021. The plan was never stayed; it went effective in August 2021; and it was affirmed almost in its entirety by

the United States Court of Appeals for the Fifth Circuit (in late summer 2022). A petition for writ of certiorari regarding the plan confirmation order has been pending at the United States Supreme Court since January 2023. Millions of dollars have been paid out to creditors under the plan, although the plan has not been completed.

This court uses the words “continuing saga” because there is a mountain of litigation that is still pending. First, there are numerous adversary proceedings still pending, in which the Reorganized Debtor and a Litigation Trustee appointed under the plan are seeking to liquidate claims that Highland has against others, in order to augment the pot of money available for unsecured creditors. Some of these adversary proceedings involve what seem like simple suits on promissory notes (albeit very large promissory notes), and others involve highly complex torts. There are numerous appeals pending and, from time to time, petitions for writs of mandamus have been filed post-confirmation. And there are new lawsuits popping up around every corner it seems.

To be sure, this post-confirmation litigation is not the “usual stuff,” and the adverse parties in this ongoing post-confirmation litigation are not the “usual suspects.” For example, the numerous post-confirmation adversary proceedings do not involve preference lawsuits or other Chapter 5 avoidance actions against non-insider creditors—as we so often see proliferate in Chapter 11 cases post-confirmation. And we do not have long-running proof of claim objections pending post-confirmation—because all of the proof of claim objections regarding non-insider creditors were resolved long ago (with major compromises reached and settlements approved by the court—some after formal mediation). And as for the myriad appeals, the non-insider creditors in this case—with proofs of claim asserted in the hundreds of millions of dollars—overwhelmingly supported Highland’s confirmed plan and, therefore, they have not been appellants on any of the aforementioned appeals.

So who has been the adverse party in this deluge of post-confirmation litigation? The founder and former Chief Executive Officer (“CEO”) of Highland, Mr. James Dondero personally, and entities that he controls (*e.g.*, family trusts; investment advisory firms; managed funds; and other entities—frequently organized offshore—that were not themselves debtors in the Highland Chapter 11 case but assert party-in-interest status in various capacities). To be clear, Mr. Dondero takes umbrage at the suggestion that *all* of the adverse parties in these numerous post-confirmation scuffles are controlled by him.

Which brings us to the current, post-confirmation contested matter before the court. Currently, a party called Hunter Mountain Investment Trust (“HMIT”), a Delaware trust, has filed a “gatekeeper motion”—that is, a motion seeking leave from this court to file an adversary proceeding in the bankruptcy court against the Reorganized Debtor’s CEO and certain investors who purchased allowed unsecured claims in this case post-confirmation and pre-Effective Date (as further described below). HMIT’s gatekeeper motion has given birth to a sideshow, so to speak, regarding *what, if any, evidence the court ought to consider in connection with HMIT’s gatekeeper motion—the latest “act” in such sideshow focusing on the propriety of considering expert testimony.*

Who or what exactly is HMIT? HMIT is an entity with no employees and no income whose only asset is a contingent right of recovery under the Highland confirmed plan—by virtue of HMIT having held a majority (99.5%) of the limited partnership interests in Highland pre-confirmation, which interests were classified in the plan in a “Class 10” (that was projected to receive no recovery). Mr. Dondero asserts that he does not control HMIT. HMIT represents that, since on or about August 2022, it has been solely controlled by a Mr. Mark Patrick (a former employee of Highland who left Highland one week after its Plan was confirmed and went to work for an entity

called “Skyview Group,” that was formed by certain former Highland employees, and apparently now advises various affiliate entities of Mr. Dondero).<sup>1</sup> While HMIT only has one asset (the “Class 10” contingent interest), Mark Patrick has testified that HMIT is liable on a \$62.6 million-dollar indebtedness that it owes to The Dugaboy Investment Trust (a family trust of which Mr. Dondero is the lifetime beneficiary), pursuant to a promissory note made by HMIT in favor of Dugaboy, in 2015, in exchange for Dugaboy transferring to HMIT an ownership interest in Highland. *See* Transcript 6/8/23 Hearing, at pp. 304-308 [DE # 3843]. *See also* Highland Exh. 51 from 6/8/23 Hearing [DE # 3817]. Mr. Patrick has testified that Dugaboy and HMIT have a settlement, pursuant to which, Dugaboy is paying HMIT’s attorney’s fees. Transcript 6/8/23 Hearing, at p. at 313:2-18 [DE # 3843].

II. **HMIT’S MOTION FOR LEAVE TO FILE LAWSUIT (a.k.a. THE “GATEKEEPER MOTION”).**

To understand the procedural motion now before the court—*which deals with whether or not the bankruptcy court should allow or exclude expert witness testimony and documents* (more fully described below)—one must understand the context in which it is being considered, which is the hearing on HMIT’s *Emergency Motion for Leave to File Verified Adversary Proceeding* that was filed by HMIT (the “HMIT Motion for Leave”), which this court loosely refers to sometimes as the “Gatekeeping Motion.”

The HMIT Motion for Leave, as alluded to, requests leave from the bankruptcy court to file a post-confirmation, post-Effective Date adversary proceeding pursuant to this bankruptcy court’s “gatekeeping” orders and, specifically, the gatekeeping, injunction, and exculpation

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<sup>1</sup> *See* DE # 2440 (Transcript of a 6/8/21 Hearing, at pp. 95:18-96:10).

provisions of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [DE # 1943], as modified (the “Plan”). The HMIT Motion for Leave, with attachments, as first filed, was 387 pages in length, and the attachments included a proposed complaint and two sworn declarations of the aforementioned former CEO of the Reorganized Debtor, Mr. Dondero. The HMIT Motion for Leave was later amended to eliminate the declarations of Mr. Dondero. DE ## 3815 & 3816. In a nutshell, HMIT desires leave to sue certain parties regarding *the post-confirmation, pre-Effective Date purchase of allowed unsecured claims*. The proposed defendants would be:

**Mr. James P. Seery, Jr.**, who now serves as the CEO of the Reorganized Debtor and also serves as the Trustee of the Highland Claimant Trust created pursuant to the Plan, and also was previously Highland’s Chief Restructuring Officer (“CRO”) during the case, then CEO, and, also, an Independent Board Member of Highland’s general partner during the Highland case. Mr. Seery is best understood as the man who took Mr. Dondero’s place running Highland—per the request of the Official Unsecured Creditors Committee.

**Certain Claims Purchasers**, known as Farallon Capital Management, LLC (“Farallon”); Muck Holdings, LLC (“Muck”), which was a special purpose entity created by Farallon to purchase unsecured claims against Highland; Stonehill Capital Management, LLC (“Stonehill”); and Jessup Holdings, LLC (“Jessup”), which was a special purpose entity created by Stonehill to purchase unsecured claims against Highland (collectively, the “Claims Purchasers”). The Claims Purchasers purchased \$240 million face value of unsecured claims post-confirmation and pre-Effective Date—which claims had already been allowed during the Highland case—in the spring of 2021 and another \$125 million face value allowed unsecured claims in August 2021. Bankruptcy Rule 3001(e) notices—giving notice of same—were filed on the bankruptcy clerk’s docket regarding these purchases. The claims had previously been held by the creditors known as the Crusader Redeemer Committee, Acis Capital, HarbourVest, and UBS (three of these four creditors formerly served on the Official Unsecured Creditors Committee during the Highland bankruptcy case).

**John Doe Defendant Nos. 1-10**, which are described to be “currently unknown individuals or business entities who may be identified in discovery as involved in the wrongful transactions at issue.”

The proposed plaintiffs would be:

**HMIT**, which represents that it was the largest equity holder in Highland and held a 99.5% limited partnership interest (specifically, Class B/C limited

partnership interests). HMIT represents that it currently holds a Class 10 interest under the confirmed Highland plan, which gives it a contingent interest in the Claimant Trust created under the plan, and as defined in the Claimant Trust Agreement (“CTA”).

**Reorganized Debtor**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Reorganized Debtor.

**Highland Claimant Trust**, as a nominal party. HMIT wishes to bring its complaint on behalf of itself and derivatively on behalf of the Highland Claimant Trust.

The gist of the complaint that HMIT seeks leave to file is as follows. HMIT asserts that something seems amiss regarding the post-confirmation/pre-Effective Date purchase of claims by the Claims Purchasers. Actually, more bluntly, HMIT asserts that “wrongful conduct occurred” and “improper trades” were made. HMIT Motion for Leave, 7. HMIT believes the Claim Purchasers paid around \$160 million for the \$365 million face amount of claims they purchased. HMIT believes that this amount was too high for any rational claim purchaser (particularly hedge funds who expect high returns) to have paid for the claims—based on Highland’s Disclosure Statement and Plan projections regarding the projected distributions under the Plan to holders of allowed unsecured claims. Also, Mr. Dondero purports to have concluded from conversations he had with representatives of one of the Claims Purchasers that they did no due diligence before purchasing the claims. Therefore, HMIT surmises, Mr. Seery must have given these claims purchasers material nonpublic information (“MNPI”) regarding Highland that convinced them that it was to their economic advantage to purchase the claims. In particular, HMIT surmises Mr. Seery shared MNPI regarding the likely imminent sale of Metro-Goldwyn-Mayer Studios, Inc. (“MGM”), in which Highland had, directly and indirectly, substantial holdings. Indeed, MGM was ultimately purchased by Amazon after a sale process that had been quite publicly discussed in

media reports for several months<sup>2</sup> and that was officially announced to the public in late May 2021 (just a few weeks after the Claims Purchasers purchased some of their claims, but a few months *before* certain of their claims—the UBS claims—were purchased).<sup>3</sup> Note that Highland and entities it controlled tendered their MGM holdings in connection with the Amazon transaction (they did not sell their holdings while the MGM-Amazon deal was under discussion and/or not made public). In summary, while HMIT’s proposed complaint is lengthy and at times hard to follow, it boils down to allegations that: (a) Mr. Seery filed (or caused to be filed) deflated, pessimistic, misleading projections regarding the value of the Debtor’s estate in connection with the Plan, (b) then induced very sophisticated unsecured creditors (who, incidentally, are not complaining) to discount and sell their claims to the likewise very sophisticated Claims Purchasers, (c) which Claims Purchasers are allegedly friendly with Mr. Seery, and are now happily approving Mr. Seery’s allegedly excessive compensation demands post-Effective Date (resulting in less money in the pot to pay off the creditor body in full, and, thus, a diminished likelihood that HMIT will realize any recovery on its contingent Class 10 interest). HMIT argues that Mr. Seery should be required to disgorge his compensation. It appears that HMIT also seeks other damages.

The individual counts that HMIT wants to allege are:

I. Breach of Fiduciary Duty (as to Mr. Seery)

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<sup>2</sup> See Highland Exh. 25 (“MGM has held preliminary talks with Apple, Netflix and other larger media companies . . . . MGM, in particular, seems like a logical candidate to sell this year. Its owners include Anchorage Capital, Highland Capital and Solus Alternative Asset Management, hedge funds that acquired the company out of bankruptcy in 2010.”) (article dated 1/26/20); Highland Exh. 26 (describing prospects of an MGM sale noting that, among its largest shareholders, was “Highland Capital Management, LP”) (article October 11, 2020). See also Highland Exhs. 27-30 & 34 (various other articles regarding possible sale/suitors of MGM, dated in years 2020 and 2021, and ultimately announcing sale to Amazon on May 26, 2021, for \$8.4 billion).

<sup>3</sup> The MGM-Amazon deal was ultimately consummated in March 2022 for approximately \$6.1 billion, net of cash acquired, plus approximately \$2.5 billion in debt that Amazon assumed and immediately repaid.

- II. Breach of Fiduciary Duty and Knowing Participation in Breach of Fiduciary Duty (as to Claims Purchasers)
- III. Fraud by Misrepresentation and Material Nondisclosure (as to all proposed defendants)<sup>4</sup>
- IV. Conspiracy (as to all proposed defendants)
- V. Equitable Disallowance (as to Muck and Jessup)
- VI. Unjust Enrichment and Constructive Trust (as to all proposed defendants)
- V. Declaratory Judgment (as to all proposed defendants)

### **III. NEXT, THE DELUGE OF ACTIVITY, IN MULTIPLE COURTS, AFTER THE FILING OF THE HMIT MOTION FOR LEAVE.**

After the HMIT Motion for Leave was filed on March 28, 2023, there was two-and-a-half months of activity regarding *what type of hearing the bankruptcy court would hold and when* on the HMIT Motion for Leave. A timeline is set forth below.

**3/28/23**: The HMIT Motion for Leave was filed, along with a request for emergency hearing on same. DE ## 3699 & 3700. HMIT requested that the court schedule a hearing on the motion “on three (3) days’ notice, and that any responses be filed no later than twenty-four hours before the scheduled hearing sought.” DE # 3700, 2. The HMIT Motion for Leave was 37 pages in length, plus another 350 pages of supporting exhibits, including two sworn declarations of Mr. Dondero.

**3/31/23**: Bankruptcy Court entered order denying an emergency hearing on the HMIT Motion for Leave. DE # 3713. The court stated that it would set the hearing on normal notice (at least 21 days’ notice), seeing no emergency.

**4/4/23-4/12/23**: HMIT pursued an unsuccessful interlocutory appeal and then a petition for writ of mandamus regarding the Bankruptcy Court’s denial of an emergency hearing at first the District Court and then the Fifth Circuit.

**4/13/23**: Highland filed a motion asking the Bankruptcy Court to set a briefing schedule on the HMIT Motion for Leave, indicating that Highland’s proposed timetable for same was opposed by HMIT. DE # 3738. The Claims Purchaser and Mr. Seery joined in that motion. DE ## 3740 & 3747. HMIT subsequently filed a response unopposed to a briefing schedule and status conference. DE # 3748.

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<sup>4</sup> This Count III has gone in and out of the various drafts HMIT has filed with the court and was included in the latest version of the proposed complaint that was filed at DE # 3816.

**4/21/23:** HMIT filed a Brief [DE # 3758] before the status conference indicating it was opposed to there being any evidence at the ultimate hearing on the HMIT Motion for Leave—arguing the Bankruptcy Court did not need evidence in order to exercise its gatekeeping function and determine if HMIT has a “colorable” claim. Rather, the court need only engage in a Rule 12(b)(6)-type plausibility analysis.

**4/24/23:** The Bankruptcy Court held a status/scheduling conference; there was extensive discussion among all the parties regarding what type of hearing there needed to be on the HMIT Motion for Leave. HMIT was adamant there should be no evidence. Highland and Mr. Seery argued they ought to be able to cross-examine Mr. Dondero since his sworn declarations had been attached to the HMIT Motion for Leave as “objective evidence” that “supported” the HMIT Motion for Leave. DE #3699, p. 2. HMIT stated that it would withdraw Mr. Dondero’s declarations, but not if the court was going to allow evidence.

**5/11/23:** Bankruptcy Court entered Order [DE # 3781] fixing a briefing schedule for the parties and stating that the court would “advise the parties on or reasonably after May 18, 2023, whether the Court intend[ed] to conduct the hearing on an evidentiary basis.”

**5/22/23:** Bankruptcy Court issued an Order [DE # 3787] after receipt of briefing, stating that “the court has determined that there may be mixed questions of fact and law implicated by the Motion for Leave—and, in particular, pertaining to the court’s required inquiry into whether ‘colorable’ claims may exist, as described in the Motion for Leave. Therefore, the parties will be permitted to present evidence (including witness testimony) at the June 8, 2023 hearing if they so choose. This may include examining any witness for whom a Declaration or Affidavit has already been filed. The parties will be allowed no more than three hours of presentation time each (allocated three hours to the movant and three hours to the aggregate respondents). This allocated presentation time may be spent in whatever manner the parties believe will be useful to the court (argument/evidence).”

**5/24/23:** HMIT filed an emergency motion for expedited discovery or alternatively for continuance of the June 8, 2023 hearing. [DE # 3788 & 3789]. HMIT continued to urge that it did not think presentation of evidence was appropriate in connection with the HMIT Motion for Leave, but that “subject to and without waiving its objections, HMIT requests immediate leave to obtain all of its requested discovery on or before the specific dates identified in each deposition notice (with duces tecum), failing which the hearing on HMIT’s Motion for Leave should be continued until HMIT has obtained such discovery. The requested discovery is generally described in this Motion, but is set forth with particularity in the Deposition Notices with Duces Tecum attached as Exhibits A-E. [paragraph numbering omitted.] In summary, HMIT seeks expedited depositions of corporate representatives of Farallon Capital Management, LLC (“Farallon”), Stonehill Capital Management, LLC (“Stonehill”), Muck Holdings, LLC (“Muck”), Jessup Holdings, LLC (“Jessup”) and also seeks the deposition of James A. Seery, Jr. (“Seery”).” Deposition Notices were attached for each of these five parties. Nothing was stated about a possible need for (or intention to present) expert testimony.

**5/26/23:** The Bankruptcy Court held yet another status conference in response to HMIT’s newest emergency motion. The Bankruptcy Court referred to this as a “second hearing on what kind of hearing we were going to have” on the HMIT Motion for Leave. The court heard more discussions on whether it was appropriate to consider evidence at the hearing on the HMIT Motion for Leave. Nothing was mentioned about possible experts. The court, continuing to believe that

there could be mixed questions of fact and law inherent in deciding the HMIT Motion for Leave, granted in part and denied in part HMIT's request for expedited discovery it sought of Mr. Seery and the Claims Purchasers. The Bankruptcy Court issued a follow-up order [DE # 3800] that provided: "(1) To the extent any party would like to depose either James P. Seery, Jr. or James Dondero in advance of the June 8 hearing ("June 8 Hearing") on HMIT's Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. No. 3699] and Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding [Dkt. 3760] (together, the "Motion for Leave"), Mr. Seery and Mr. Dondero shall be made available for depositions ("Depositions") on a date and at a time agreeable to the parties that is no earlier than May 31, 2023, and no later than June 7, 2023, and no discovery or depositions of any other party or witness will be permitted prior to the June 8 hearing; and (2) None of the parties shall be entitled to any other discovery, including the production of documents from Mr. Seery or Mr. Dondero, or any other party or witness pursuant to a subpoena duces tecum, or otherwise, prior to the conduct of the Depositions or to the court's ruling on the Motion for Leave following the June 8, 2023 hearing" The Bankruptcy Court issued this ruling with the expectation—based on everything it heard—that HMIT did not wish for the court to consider evidence but, if it did, it thought it should get to depose Mr. Seery and the Claims Purchasers. The court reached what seemed like appropriate middle ground by allowing the deposition of Mr. Seery and allowing the other parties to depose Mr. Dondero (for whom sworn declarations had been submitted), but the court was not going to allow any more discovery (i.e., of the Claims Purchasers) at so late an hour. The court was aware that HMIT and Mr. Dondero had been seeking discovery from the Claims Purchasers in state court "Rule 202" proceedings for approximately two years.

**June 5, 2023 (10:10 pm):** HMIT filed its Witness and Exhibit List disclosing two potential expert witnesses (along with biographical information and a disclosure regarding the subject matter of their likely testimony).

**June 7, 2023 (4:07 pm):** A Joint Motion to Exclude Expert Testimony and Documents was filed by Highland, Mr. Seery, and the Highland Claimant Trust ("Motion to Exclude Expert Evidence").

**June 8, 2023 (8:12 am):** HMIT filed a Response to the Motion to Exclude Expert Evidence.

**June 8, 2023 (9:30 am):** The Bankruptcy Court commenced its hearing on the HMIT Motion for Leave. The parties desired for court to rule on whether the expert testimony and exhibits should be allowed into the record. After much discussion, the court informed parties that it had not had the opportunity to study their eleventh-hour filings, and that the court would go forward with the hearing as the court had earlier contemplated (three hours per side; no experts for now) and the court would take the Motion to Exclude Expert Evidence under advisement and would schedule a "Day 2" for the hearing on the HMIT Motion for Leave for the experts if it determined that was appropriate. The court gave Highland, Mr. Seery, and the Highland Claimant Trust a deadline of 6/12/23 to reply to HMIT's Response. They filed a Reply (in which the Claims Purchasers joined). The Bankruptcy Court ordered no more pleadings would be considered. HMIT filed another pleading on this topic on 6/13/23 [DE # 3845] and Highland and Mr. Seery responded to the HMIT additional pleading [DE # 3846] and then HMIT replied to their response [DE # 3847].

#### IV. TURNING, FINALLY, TO THE MOTION TO EXCLUDE EXPERT EVIDENCE

As indicated in the timeline above, HMIT designated on June 5, 2023, at 10:10 pm CDT, two expert witnesses to testify at the hearing on the HMIT Motion for Leave. The first one was Mr. Scott Van Meter, stating that he “may provide opinion testimony on issues relating to Mr. Seery’s compensation and claims trading.” The second one was Mr. Steve Pully, stating that he “may provide opinion testimony on issues relating to Mr. Seery’s claims trading.” To be clear, Mr. Seery is not alleged to have engaged in claims trading (i.e., he is not alleged to have either sold or purchased any claims in the Highland case). Rather, it is surmised by HMIT that Mr. Seery might have shared MNPI with the Claims Purchasers. Details about the two proposed experts’ education, experience, and the likely substance of their testimony were provided.

Further, with regard to Mr. Van Meter, HMIT disclosed that he had analyzed the claims trading in the Highland case and holds the opinion that there are “red flags” plausibly indicating the use of MNPI in connection with the claim purchasers’ investment in their claims –primarily among them the fact that the claims purchasers allegedly did not undertake due diligence. He also would apparently opine that Mr. Seery’s compensation is not reasonable or excessive because not based on any market study and because the Claims Purchasers, as large creditors on the post-confirmation oversight committee, have the ability to control it.

Further, with regard to Mr. Pully, HMIT disclosed that the projections in the publicly available information (presumably the Disclosure Statement and Plan and accompanying exhibits, the Bankruptcy Schedules, and Monthly Operating Reports) would not have rewarded the Claims Purchasers with the type of economic return that hedge funds/private equity firms would expect to realize. Thus, they must have had some MNPI to convince them that the claims purchasing was worthwhile.

There are procedural problems and substantive problems with the Proposed Experts (hereinafter so called).

*A. The Procedural Problems.*

The timeline set forth above is highly problematic. Highland, Mr. Seery, and the Highland Claimant Trust refer to the timeline here as tantamount to “trial by ambush.”

HMIT counters that it, in fact, complied with this court’s local rules and national rules as well. As to the local rules, Local Bankruptcy Rule 9014-1(c) of the Northern District of Texas requires, in contested matters, the exchange of exhibits and witness lists with opposing parties at least 3 calendar days before a scheduled hearing (unless a specific order otherwise applies). The hearing on the HMIT Motion for Leave was scheduled for June 8, 2023, at 9:30 am CDT, and HMIT filed its exhibit and witness list on June 5, 2023, at 10:10 pm CDT—technically three calendar days before the hearing, albeit less than 72 hours before the hearing. As for the national rules, HMIT states that it was under no duty to disclose the existence or substance of expert testimony prior to the exchange of witness lists, because national Rule 9014 of the Federal Rules of Bankruptcy Procedure (“FRBP”), applying to contested matters, does not incorporate Rule 26(a)(2) of the Federal Rules of Civil Procedure (“FRCP”), which defines the content and timing for expert disclosures (unless the court directs otherwise, which it did not here).

HMIT’s focus on these rules is disingenuous. The court does not view the Proposed Experts as having been appropriately and timely disclosed in light of the two-and-a-half-month timeline set forth above and—most importantly—the bankruptcy court’s multiple prior conferences and orders setting the scope of the hearing and associated discovery. HMIT’s revelation (approximately 60 hours before the hearing on the HMIT Motion for Leave) that it

sought to offer expert testimony came far too late. HMIT never raised even the prospect of expert testimony at any point in its multiple filings with the bankruptcy court (which consisted of many hundreds of pages) or during the two status/scheduling conferences on the HMIT Motion for Leave. During the two status/scheduling conferences, this court repeatedly asked HMIT what it wanted to do at the hearing on the HMIT Motion for Leave (as far as there being evidence or no evidence—zeroing in on the inconvenient complication for HMIT that it had already put in some evidence, through the filing of the declarations of Mr. Dondero in support of its motion, and this, at the very least, would entitle the parties to cross-examine him on the statements contained in the declarations). HMIT represented that it desired for the hearing to be conducted “on the pleadings only” and that it had or would withdraw the declarations of Mr. Dondero (it had not withdrawn the declarations as of the status/scheduling conferences). But, alternatively, if there would be evidence, HMIT wanted to conduct expedited discovery of documents, fact depositions, and corporate representative depositions. [DE # 3791]. **HMIT made no mention of any experts.** Only after the bankruptcy court had ruled on HMIT’s request for expedited discovery—and expressly limited the scope of discovery—did HMIT reveal its Proposed Experts [DE # 3818]. Obviously, the court would have fully vetted with the parties at the status/scheduling conferences the need for experts and the need for any discovery of them if HMIT mentioned it as a possibility.

Additionally, while HMIT focuses on the fact that FRBP 9014 excludes FRCP 26(a)(2)(b)’s requirements regarding expert witness disclosures and reports (absent the court directing otherwise), FRBP 9014 **does** include **FRCP 26(b)(4)(A)**, in contested matters, which provides that “[a] party may depose any person who has been identified as an expert whose opinions may be presented at trial.” See FRBP 9014(b); FRBP 7026. As alluded to above, this bankruptcy court had limited pre-hearing discovery to “depositions of Mr. Dondero and/or Mr. Seery” in reliance on

HMIT's representations, which omitted any reference to expert witnesses. By waiting until roughly 60 hours before the hearing to disclose the Proposed Experts, this resulted in Highland, Mr. Seery, and the Highland Claimant Trust not having sufficient time to seek to modify the court's prior status/scheduling orders, let alone take two expert depositions.

B. *The Substantive Problems.*

Finally, on a substantive level, the Proposed Experts' testimony and documents are inadmissible because they will not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Federal Rule of Evidence 702(a) provides that a witness who is qualified as an expert may testify in the form of an opinion or otherwise if, among other requirements, "the expert's scientific, technical, or otherwise specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue."

The fact finder here at this stage, in the context of determining whether HMIT's proposed complaint asserts "colorable" claims under the gatekeeper provision of the Plan, obviously, is the bankruptcy judge. The judge, thus, may decide whether the Proposed Experts would help her analyze or understand an issue. This court is well within its discretion to conclude that the Proposed Experts would not advance the judge's analysis. This bankruptcy judge has had years of experience (both before and after her 17 years as a bankruptcy judge) with the topic of claims purchasing that sometimes occurs during a bankruptcy case. The court notes, anecdotally, that the activity of investing in distressed debt (which frequently even occurs during a bankruptcy case—sometimes referred to as "claims trading") is ubiquitous and has, indeed, been for a couple of decades. As noted by one scholar:

The creation of a market in bankruptcy claims is the single most important development in the bankruptcy world since the Bankruptcy Code's enactment in

1978. [Citations omitted.] Claims trading has revolutionized bankruptcy by making it a much more market-driven process. [Citations omitted.] . . . The development of a robust market for all types of claims against debtors has changed the cast of characters involved in bankruptcies. In addition to long-standing relational creditors, like trade creditors or a single senior secured bank or bank group, bankruptcy cases now involve professional distressed debt investors, whose interests and behavior are often quite different than traditional relational counterparty creditors.

ADAM J. LEVITIN, BANKRUPTCY MARKETS: MAKING SENSE OF CLAIMS TRADING, 4 BROOK. J. CORP. FIN. & COM. L. 64, 65 (2010).

This judge has likewise had decades of experience with hedge funds and private equity funds. The court understands very well financial concepts such as return on investment, risk, and the handicapping of how certain events might impact recoveries. This court can take judicial notice that there was volatility in the capital markets during the time period of this case that would certainly factor into decisions to buy or sell claims.<sup>5</sup> This court understands the concepts of MNPI and fiduciary duties. The judge remembers very well when the possibility of an MGM-Amazon transaction flooded the news in late 2020 and 2021, and then became a reality. The court remembers asking the parties in the Highland case during open court about it, since it was widely known that Highland and its affiliates owned direct or indirect interests in MGM stock. This was before, by the way, certain of the claims purchases that are at issue here were made.

Finally, this judge has decades of experience with executive compensation in bankruptcy cases and in connection with post-confirmation trusts.<sup>6</sup> In fact, this court approved Mr. Seery's

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<sup>5</sup> A court "can, of course, take judicial notice of stock prices." *Schweitzer v. Invs. Comm. of Phillips 66 Savings Plan*, 960 F.3d 190, 193 n.3 (5th Cir. 2020).

<sup>6</sup> This court even ran across one article that the above-signing judge published on the topic before she was a judge. *Bringing Home the Bacon, or Just Being a Hog? Employee and Executive Compensation Issues in Chapter 11*, 22<sup>nd</sup> Annual Bankruptcy Conference, The University of Texas School of Law (Nov. 2003) (co-authored with Frances Smith). The bankruptcy judge does not mean to suggest that a 20-year-old article makes anyone per se an expert. It

compensation early on during the bankruptcy case (in 2020), and his compensation was negotiated by the former members of the Official Unsecured Creditors Committee, among others. Mr. Seery's compensation during this bankruptcy case was obviously subject to a motion, notice and a hearing, and was fully disclosed. Mr. Seery's base compensation now is the same as what this court approved back in 2020. Certainly, in a bankruptcy case, one size does not fit all. Highland is a unique case that has involved great contentiousness and hundreds of millions of dollars of assets. Mr. Seery's compensation reflects these circumstances, among other things.

In summary, with all due respect to the Proposed Experts, it is hard for this court to conceive how they could help this court to understand the evidence or determine a fact in issue relative to the gatekeeping motion—as contemplated by Fed. R. Evid. 702(a)—when this court deals with the issues presented by motion, and similar issues, somewhat regularly.

Accordingly, the court will exercise its discretion under Fed. R. Evid 702(a) and exclude the Proposed Experts testimony and HMIT Exhibits 39-52 relating to same.

A further opinion and order will be forthcoming on the HMIT Motion for Leave.

**##### END OF MEMORANDUM OPINION AND ORDER#####**

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is merely to further the point that a long-term bankruptcy judge with Chapter 11 experience typically has developed expertise regarding executive compensation issues pre-and post-confirmation in Chapter 11 cases.

# Exhibit 8



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 1, 2023

  
United States Bankruptcy Judge

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

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
HIGHLAND CAPITAL MANAGEMENT, L.P., ) Case No. 19-34054-sgj11  
)  
Reorganized Debtor. )  
)  
\_\_\_\_\_)

**ORDER STRIKING HMIT'S EVIDENTIARY PROFFER PURSUANT TO  
RULE 103(a)(2) AND LIMITING BRIEFING**

The Court has reviewed Hunter Mountain Investment Trust's ("HMIT") *Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Proffer"; Dkt. No. 3858), the *Highland Parties' Joint Objections To And Motion To Strike HMIT's Evidentiary Proffer Pursuant to Rule 103(a)(2)* ("Motion"; Dkt. No. 3860) filed by Highland Capital Management, L.P., the Highland Claimant Trust, and James P. Seery, Jr. (collectively, the "Highland Parties"), and the *Claims Purchasers' Joinder to the Highland Parties' Objections and Motion to Strike HMIT's Purported Proffer* (Dkt. No. 3861) filed by Muck Holdings, LLC, Jessup Holdings LLC, Farallon Capital Management,

L.L.C., and Stonehill Capital Management LLC (collectively with HMIT and the Highland Parties, the “Parties”). After due deliberation, the Court has determined that good and sufficient cause has been shown for the relief requested in the Motion. It is therefore **ORDERED** that:

1. The Motion is **GRANTED**.
2. The Proffer and its accompanying declarations are stricken from the record for the reasons set forth in the Court’s June 27, 2023 email (attached hereto as Exhibit A). The Court directs the Clerk to remove docket entry 3858 from the docket.
3. The Parties shall not file any additional briefs, motions, pleadings, proffers, or other submissions with the Court in connection with the Motion, the Highland Parties’ *Joint Motion to Exclude Testimony and Documents of Scott Van Meter and Steve Pully* (Dkt. No. 3820), or any proposed/excluded expert evidence relative to HMIT’s *Motion for Leave to File Verified Adversary Proceeding* (Dkt. No. 3699).

**### END OF ORDER ###**

002307

# Exhibit A

From: Traci Ellison <Traci\_Ellison@txnb.uscourts.gov>  
Date: June 27, 2023, 10:52 AM  
Case: 19-34054-sgj11 Doc: 3869 Filed: 07/05/23 Entered: 07/05/23 16:51:48 Desc  
To: "Stancil, Madeline" <MStancil@hklaw.com>, "Sawnie A. McEntire" <smcentire@pmmlaw.com>, "Roger L. McCleary" <rmccleary@pmmlaw.com>, "Omar J. Alaniz" <OAlaniz@reedsmith.com>, "Mcllwain, Brent R (DAL - X59481)" <Brent.Mcllwain@hklaw.com>  
Subject: 19-34054-sgj11 Highland Capital Management, L.P.

Dear Counsel:

Please see the following message from Judge Jernigan:

"With regard to the Evidentiary Proffer ("Proffer") of Hunter Mountain Investment Trust ("HMIT") filed at DE # 3858 on 6/19/23 (i.e., after the 6/8/23 hearing on HMIT's Motion for Leave to File Verified Adversary Proceeding [DE # 3699] and after the court's written 6/16/23 ruling regarding the admissibility of the proposed expert evidence), the court has determined that the Proffer is unnecessary. Rule 103(a)(2) does not apply if "the substance" of the excluded evidence "was apparent from the context." Fed. R. Evid. 103(a)(2). Here, "the substance" of the excluded evidence was quite apparent from the "context"--more specifically, the witness and exhibit list filed by HMIT, the proposed exhibits offered [see DE # 3818], and the statements of HMIT's counsel on the record at the 6/8/23 hearing.

The court is aware of the motion to strike the Proffer [DE # 3860] and the Joinder therein [DE # 3861]. The court concludes it is appropriate to grant the motion to strike. The court directs counsel for movants to upload a form of order that grants their motion to strike. The order shall direct the Clerk to mark DE # 3858 as stricken from the record as both filed without authority and unnecessary pursuant to FRE 103(a)(2).

The parties are directed to file no more pleadings in the bankruptcy court regarding this issue of the proposed/excluded expert evidence relative to DE # 3699. The court has ruled [at DE # 3854]."

Thank you,  
Traci

002309

# Exhibit 9



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

  
United States Bankruptcy Judge

Signed October 4, 2023

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

IN RE:

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Reorganized Debtor.

§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj-11

**ORDER DENYING MOTION OF HUNTER MOUNTAIN INVESTMENT TRUST  
SEEKING RELIEF PURSUANT TO FEDERAL RULES OF BANKRUPTCY  
PROCEDURE 7052, 9023, AND 9024**

On September 8, 2023, Hunter Mountain Investment Trust (“HMIT”) filed its *Motion to Alter or Amend Order, To Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial Under Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and Incorporated Brief* (hereinafter, the “Motion”).<sup>1</sup> In the Motion, HMIT requests that the court alter or amend its findings set forth in its 105-page Memorandum Opinion and Order, dated August

<sup>1</sup> Bankr. Dkt. No. 3905

25, 2023 (hereinafter, the “Order Denying HMIT’s Motion for Leave”)<sup>2</sup> in which this court, in the exercise of its “gatekeeping” function pursuant to the Gatekeeper Provision<sup>3</sup> of the Debtors’ confirmed Plan<sup>4</sup> and pre-confirmation Gatekeeper Orders, denied HMIT’s *Emergency Motion for Leave To File Verified Adversary Proceeding*.<sup>5</sup> The Order Denying HMIT’s Motion for Leave was issued following an evidentiary hearing on June 8, 2023.

HMIT now wants the bankruptcy court to reconsider certain findings and conclusions (or make additional ones—or even grant a new hearing) with regard to the Order Denying HMIT’s Motion for Leave—specifically pertaining to the subject of HMIT’s lack of standing (which was one of multiple reasons the court gave for issuing the Order Denying HMIT’s Motion for Leave). The ground articulated by HMIT is as follows: “because post-hearing financial disclosure filings in the bankruptcy matter further evidence [sic] that the court’s standing determinations are incorrect and should be corrected.” Motion, at ¶ 3.<sup>6</sup> In other words, HMIT suggests that certain “post-hearing financial disclosure filings” filed in the main Highland bankruptcy case by the Reorganized Debtor (on July 6, 2023<sup>7</sup> and July 21, 2023<sup>8</sup>) somehow now demonstrate that HMIT, indeed, has standing to pursue the adversary proceeding that it sought leave to file.

The Motion is denied. First, the court sees no reasonable grounds to reopen the record with these “post-hearing financial disclosures.” For one thing, the “post-hearing financial disclosure filings” are not materially different than information that was already on file in the bankruptcy

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<sup>2</sup> Bankr. Dkt. Nos. 3903 & 3904.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Order Denying HMIT’s Motion for Leave.

<sup>4</sup> The court entered its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Bankr. Dkt. No. 1943] on February 22, 2021.

<sup>5</sup> Bankr. Dkt. Nos. 3699, 3815, 3816, and 3760.

<sup>6</sup> HMIT attached the “post-hearing financial disclosure filings in the bankruptcy matter” as exhibits to the Motion. See Exhibits 2 and 3 to the Motion.

<sup>7</sup> Bankr. Dkt. No. 3872.

<sup>8</sup> Bankr. Dkt. Nos. 3888 and 3889.

case for all to see, before the June 8, 2023 hearing. *See* Bankr. Dkt. Nos. 3756 & 3757 (routine Post-Confirmation Reports, filed by the Reorganized Debtor on April 21, 2023, which show liabilities, disbursements, and “Remaining investments, notes, and other assets”—albeit without specific values ascribed to the latter). So, to the extent HMIT is arguing that the “post-hearing financial disclosure filings” are something akin to newly discovered evidence or otherwise a ground for granting a new hearing or altering findings, HMIT’s argument lacks merit. Moreover, even if this court were to consider the “post-hearing financial disclosure filings,” the court disagrees with HMIT’s central argument that they demonstrate that HMIT’s contingent interest is “in the money” and, thus, that it has both constitutional and prudential standing to pursue the adversary proceeding it wants to file. Notably, HMIT does not give proper attention to the voluminous supplemental notes in the “post-hearing financial disclosure filings” that are integral to understanding the numbers therein. For example, as mentioned in Note 5 therein, the administrative expenses and legal fees of the Reorganized Highland and the post-confirmation trust continue to deplete their assets, due to the fact that “(b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected.” This significant and widespread litigation results in massive indemnification obligations, as well as massive, continuing legal fees and expenses. The assets shown in the “post-hearing financial disclosure filings” will only be available for distribution after satisfaction of all legal fees and expenses and indemnity obligations. As also noted in Note 5 therein, it is expected that the Highland post-confirmation trust and its subsidiaries will operate at an operating loss prospectively. The information in the “adjustments” column of the assets section of the post-hearing financial disclosures “does not assume any expected future operating cash burn, which is expected to be significant.” Additionally, as indicated in Note 6, sometimes Highland has been

unable to obtain full and complete information regarding asset values for inclusion in the post-hearing financial disclosures—thus impacting the accuracy of some valuations used. For example,

The value of SE Multifamily Holdings LLC maintained on this balance sheet is \$15.7 million, which is a component of the “Investments” line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities’ previous disclosures of this interest at values of \$20 million and \$12 million, Highland also received interest from Dondero to acquire the interest for \$3.8 million, among other assets. . . . Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero controlled entities have not provided to date.

In summary, HMIT argues no reasonable grounds to justify any of the relief sought in the Motion.

Accordingly,

**IT IS ORDERED** that the Motion be, and hereby is, **DENIED**.

**###END OF ORDER###**

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024

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**APPELLANT RECORD**

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

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

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

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

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

**APPELLANTS' STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL – Page 1**

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

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

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

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

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

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj 1.

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 4**

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

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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 5**

DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan "Gatekeeper Provision" and Pre-Confirmation "Gatekeeper Orders": Denying Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust's Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland's Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust's Supplement to Response to Motion to Stay

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

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

In re	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor. <sup>1</sup>	§	
	§	
	§	

**MOTION FOR LEAVE TO FILE A DELAWARE COMPLAINT**

<sup>1</sup> The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] (the “*Plan*”), filed by Highland Capital Management, L.P. (“*HCMLP*”) became effective on August 11, 2021 (the “*Effective Date*”).

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## I. PRELIMINARY STATEMENT

1. Movant Hunter Mountain Investment Trust (“Movant”) seeks leave to file a complaint in Delaware Chancery Court seeking the removal of James P. Seery, Jr. (“Mr. Seery”) as Trustee of the Claimant Trust created pursuant to the plan of reorganization of Highland Capital Management, L.P. (“Highland” or the “Debtor”). Under applicable Delaware law, removal of a trustee is warranted when the trustee commits a breach of trust, substantially impairs the administration of the trust through the Trustee’s continued service, is unwilling or unable to perform his duties properly, or has hostility toward one or more beneficiaries that threatens efficient administration of the trust. As set forth below in greater detail, all four of these circumstances exist here.

2. Mr. Seery has breached his duties, including his duty of loyalty by using Claimant Trust assets to fund a separate indemnity sub-trust (to pay his own potential legal expenses – in a blatant conflict of interest) instead of using those assets to pay the claims of Claimant Trust beneficiaries. In addition, Mr. Seery is overtly hostile to Movant—the holder of Class 10 claims and the largest holder of Contingent Trust Interests under the Claimant Trust. Either of these circumstances alone justifies Mr. Seery’s removal, but the combination requires it. The attached proposed Delaware complaint states a “colorable” claim, and this Motion should be granted.

## II. STATEMENT OF FACTS

### A. Highland’s Plan Contemplated Orderly “Monetization” of Highland’s Assets, Payment of Eleven Classes of Claims, and Winding Up of Highland’s Business

3. The Bankruptcy Court entered an order (the “Confirmation Order”) confirming the Fifth Amended Plan of Highland Capital Management, L.P. (as Modified) (the “Plan”) on February 22, 2021.<sup>2</sup> In broad strokes, the Plan called for “the orderly wind-down of the Debtor’s estate,

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<sup>2</sup> Confirmation Order, Dkt. 1943.

including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board.”<sup>3</sup>

4. The Plan contemplated payment of 11 classes of claims. Classes 1 through 7 have already been paid. The remainder are: Class 8, comprising general unsecured claims, of which 93% of allowed claims have been paid;<sup>4</sup> Class 9, comprising subordinated claims; Class 10, comprising Class B/C limited partnership interest claims; and Class 11, comprising Class A limited partnership interest claims.<sup>5</sup> Highland’s former equity holders were assigned Class 10 and 11 claims. Movant Hunter Mountain Investment Trust is the only holder of Class 10 claims and owner of the lion’s share of the residual equity in Highland.<sup>6</sup>

5. The Plan contemplated that all of Highland’s assets would be managed through three entities: (1) a Claimant Trust, (2) a Litigation Sub-Trust, and (3) the Reorganized Debtor.<sup>7</sup> The Claimant Trust was tasked with administering “Claimant Trust Assets” and serving as the Reorganized Debtor’s limited partner.<sup>8</sup> The Litigation Sub-Trust, a sub-trust of the Claimant Trust, was tasked with pursuing “Estate Claims.”<sup>9</sup> And the Reorganized Debtor was tasked with

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<sup>3</sup> *Id.*, ¶ 2.

<sup>4</sup> *See* Dkts. 3956 at p. 7 and 3757 at p. 13.

<sup>5</sup> *See* Plan, Ex. A to Dkt. 1943, at Art. III, §§ B, H.

<sup>6</sup> *See* Plan at Art. I, § B, ¶¶ 34-36.

<sup>7</sup> *See* Plan at Art. IV, § A.

<sup>8</sup> The Plan defines “Claimant Trust Assets” to mean all assets of the estate that are not “Reorganized Debtor Assets,” including all causes of action, available cash, proceeds realized from such assets, any rights of setoff or recoupment and other defenses with respect to such assets, any assets transferred to the Claimant Trust by the Reorganized Debtor, the limited partnership interests in the Reorganized Debtor, and the ownership interests in the Reorganized Debtor’s new general partner. *See* Plan at Art. I, § B, ¶ 26.

<sup>9</sup> *See* Plan at Art. IV, § A. The Plan defines “Estate Claims” to mean “any and all estate claims and causes of action against [James] Dondero, [Mark] Okada, other insiders of the Debtor, and any of their related entities, including any promissory notes held by any of the foregoing. Plan at Art. I, § B, ¶ 60; Dkt. 354, Ex. A at p. 4 (defining “Estate Claims” to mean “claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing.”).

administering the “Reorganized Debtor Assets” and managing the wind down of the “Managed Funds.”<sup>10</sup>

**B. The Confirmation Order and the Plan Contemplated the Creation of a Claimant Trust Managed by Mr. Seery under the Supervision of an Oversight Board**

6. The confirmed Plan contemplated the creation of a “Claimant Trust,” to be created pursuant to a separate Claimant Trust Agreement, the “CTA.”<sup>11</sup> According to the Bankruptcy Court, the whole reason for the Claimant Trust was to “manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders.”<sup>12</sup> The Court further observed that, upon full payment of allowed claims, the Claimant Trust contemplated that “any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests).”<sup>13</sup>

7. Beneficiaries of the Claimant Trust are termed “Claimant Trust Beneficiaries,” a term defined to mean (1) holders of allowed general unsecured claims, (2) holders of allowed subordinated claims, and upon certification by the Claimant Trustee that holders of allowed general unsecured and allowed subordinated claims have been paid in full with interest, and (3) holders of allowed Class A and B/C limited partnership interests.<sup>14</sup> Notably, the CTA repeatedly instructs that the Claimant Trustee is to act “with a view toward maximizing value in a reasonable time” for the purpose of

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<sup>10</sup> See Plan at Art. IV, § B. The Plan defines “Reorganized Debtor Assets” to mean “any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust.” Plan at Art. I, § B, ¶ 115. The Plan defines “Managed Funds” to mean Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Partners, L.P., and any other investment vehicle managed by Highland pursuant to an executory contract. Plan at Art. I, § B, ¶ 84.

<sup>11</sup> See Plan at Art. IV, § B.

<sup>12</sup> See Confirmation Order, Dkt. 1943, at ¶ 2.

<sup>13</sup> *Id.* at ¶ 42(c).

<sup>14</sup> See CTA, Dkt. 3521-5, at ¶ 1.1(h).

distributing the Claimant Trust assets to Claimant Trust Beneficiaries.<sup>15</sup> Consistent with the Confirmation Order’s description of the Plan’s waterfall, upon paying the holders of claims in Classes 1-9 in full with interest, the Claimant Trustee is obligated to file with the Bankruptcy Court a certification (called the “GUC Certification” in the CTA) deeming holders of Class A, B, and C limited partnership interests (*i.e.*, Class 10 and 11 claims holders) “Beneficiaries” of the CTA with entitlement to distributions of residual assets under the terms of the CTA.<sup>16</sup>

8. Under the Plan, Mr. Seery is the designated Claimant Trustee tasked with the obligation to oversee the administration and distribution of Claimant Trust Assets to unsecured claims and equity interests represented by Classes 8 through 11.<sup>17</sup> Importantly, both the Confirmation Order and the Plan contemplated that Mr. Seery’s management of the Claimant Trust would be supervised by a five-member committee (comprised of at least two disinterested members), referred to in the CTA as the “Oversight Board.”<sup>18</sup>

9. In its Confirmation Order, the Bankruptcy Court described the Oversight Board’s role and its membership at some length. According to the Court, “[t]he Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor...**will all be managed and overseen by the Claimant Trust Oversight Committee.**”<sup>19</sup> In terms of the Board’s membership, the Court explained that the members of the Unsecured Creditors Committee (“UCC”) had volunteered to serve as the initial members of the

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<sup>15</sup> *Id.* at ¶ 2.3(b)(viii); *see also id.* at ¶ 2.3(b)(i) (Claimant Trustee must act “in an expeditious but orderly manner with a view toward maximizing value”), ¶ 3.2(a) (“Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust.”).

<sup>16</sup> *Id.* at § 5.1(c).

<sup>17</sup> *See* Plan, Ex. A to Dkt. 1943, at Art. I, § B, ¶ 28 and Art. IV, § B.1.

<sup>18</sup> *See Id.* at Art. IV, § B.2; CTA, ¶¶ 1.1(II), 4.1. Despite the CTA’s mandate that the Oversight Board “shall” be comprised of at least two disinterested members, the initial Board’s makeup consisted of four members of the UCC and only one disinterested member, David Pauker. *See id.*, ¶ 1.1(II).

<sup>19</sup> *See* Confirmation Order, Dkt. 1943, at ¶ 42(a) (emphasis added).

Oversight Board.<sup>20</sup> The Confirmation Order goes on to discuss in detail the initial members and their qualifications to serve.<sup>21</sup> In approving their appointment, the Court emphasized Mr. Seery’s testimony that “he believe[d] the selection of the . . . members of the Claimant Trust Oversight Board [was] in the best interests of Debtor’s economic constituents.”<sup>22</sup> Plainly, the Court believed that a five-member Board would oversee Mr. Seery’s conduct as Claimant Trustee to ensure that the Plan would be fully performed.

10. The Plan likewise contemplated that the five-member Oversight Board would supervise Mr. Seery’s monetization of Claimant Trust assets and his management and distribution of those assets after monetization. Indeed, the Plan expressly stated that the Oversight Board would oversee “the management and monetization of the Claimant Trust Assets, [] the management of the Reorganized Debtor . . . and the Litigation Sub-Trust . . . , subject to the terms of the Claimant Trust Agreement.”<sup>23</sup> The CTA, in turn, provides that the Oversight Board “shall,” among other things: (1) “consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust;” and (2) “oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee.”<sup>24</sup> The CTA further limits the Claimant Trustee’s power to undertake certain actions without “vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements” of the Agreement.<sup>25</sup> Thus, the Claimant Trustee should consult the Oversight Board before terminating or extending the term of the Claimant Trust, litigating or settling any “Material Claims,” selling or monetizing certain assets, including Reorganized Debtor

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<sup>20</sup> *Id.* at ¶ 8.

<sup>21</sup> *Id.* at ¶ 44.

<sup>22</sup> *Id.* at ¶ 42.

<sup>23</sup> *See* Plan, Ex. A to Dkt. 1943, at Art. IV, § B.2.

<sup>24</sup> CTA, Dkt. 3521-5, at ¶ 4.2(a).

<sup>25</sup> *Id.* at ¶ 3.3(b).

assets valued at greater than \$3 million, making certain cash distributions to Claimant Trust Beneficiaries, making distributions on “Disputed Claims,” reserving cash or cash equivalents to meet contingent liabilities (including indemnification obligations), borrowing, investing Claimant Trust assets, changing the Claimant Trustee’s compensation, or retaining certain counsel, experts, advisors, or other professionals.<sup>26</sup> In other words, the Oversight Board, as originally conceived, was contemplated to have a substantial governance role in the day-to-day activities of the Claimant Trust and the Claimant Trustee.

11. In its September 7, 2022 opinion, confirming the Plan in part, the Fifth Circuit likewise observed that, “[t]he whole operation is overseen by a Claimant Trust Oversight Board (the “Oversight Board”) comprised of four creditor representatives and one restructuring advisor.”<sup>27</sup> Notably, in the same opinion, the Fifth Circuit struck down a provision of the Plan purporting to exculpate from liability parties other than Highland, the UCC and its members, and the three independent directors appointed to manage Highland during bankruptcy, holding that broader exculpation was inconsistent with 11 U.S.C. § 524(e).<sup>28</sup> In short, the Fifth Circuit refused to exculpate Mr. Seery for actions taken in his role as Claimant Trustee and expressed the understanding that his post-confirmation conduct as Trustee of the Claimant Trust would be affirmatively overseen by an independent Oversight Board.

**C. The Plan Did Not Contemplate, but the Court Subsequently Approved, the Creation of an Indemnity Subtrust**

12. One entity the Plan did not contemplate was an indemnity sub-trust designed to cover potential post-confirmation claims against estate professionals. Instead, Mr. Seery testified

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<sup>26</sup> *Id.* at ¶ 3.3(b)(i)-(xii).

<sup>27</sup> *Matter of Highland Capital Management, L.P.*, 48 F.4th 419, 427 (5th Cir. 2022).

<sup>28</sup> *Id.* at 438. Nor is Mr. Seery exculpated for “any acts or omissions...arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct.” Confirmation Order, Dkt 1943, at ¶ Y.

extensively during the hearing on Plan confirmation that Highland would obtain director and officer (“D&O”) insurance to cover any claims against or liabilities imposed on those individuals charged with implementing the Plan. Indeed, one of the conditions to the Plan becoming effective was “the Debtor obtaining D&O Insurance acceptable to the Debtor, the Committee, the Claimant Trust Oversight Committee, and the Litigation Trustee.”<sup>29</sup> Nonetheless, four months after Plan confirmation, Highland filed a motion with the Bankruptcy Court seeking authorization to create a new “Indemnity Subtrust” designed to maintain an indemnity trust account with a balance of “not less than \$25 million” that would conditionally indemnify post-confirmation professionals “in lieu of obtaining D&O insurance.”<sup>30</sup>

13. The parties to be conditionally indemnified under the Indemnity Subtrust include Mr. Seery as Claimant Trustee, the Oversight Board and its members (described below), their professionals, the Litigation Trustee, the Reorganized Debtor and its partners, members, directors, and officers, and the new general partner of the Reorganized Debtor and its partners, members, directors, and officers (including Mr. Seery).<sup>31</sup> In support of the Subtrust Motion, Mr. Seery testified that he and other post-confirmation management “intend[ed] to look for insurance coverage that would appropriately replace the Indemnity Trust if that’s a more efficient vehicle.”<sup>32</sup> Over various objections, the Court granted Highland’s Subtrust Motion on July 21, 2021.<sup>33</sup>

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<sup>29</sup> See Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief (the “Subtrust Motion”), Dkt. 2491 at ¶ 13.

<sup>30</sup> *Id.* at ¶¶ 21, 26.

<sup>31</sup> See *id.* at ¶ 18 n.8; see also CTA, Dkt. 3521-5 at § 8.2.

<sup>32</sup> July 19, 2021 Hearing Transcript, Dkt. 2598 at 45:14-25.

<sup>33</sup> Order Approving Debtor’s Motion for Entry of an Order (I) Authorizing the (A) creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief, Dkt. 2599.

14. The Subtrust Motion identified Mr. Seery as the “Indemnity Trust Administrator.”<sup>34</sup> In his capacity as Administrator, Mr. Seery was given total control of the administration of the Indemnity Subtrust:

...For any action contemplated or required in connection with the operation of the Indemnity Trust, and for any guidance or instruction to be provided to the Indemnity Trustee, **such function, rights and responsibility shall be vested in the Indemnity Trust Administrator, and the Indemnity Trustee will take written directions from the Indemnity Trust Administrator**, in such form specified in the Indemnity Trust Agreement and otherwise satisfactory to the Indemnity Trustee.<sup>35</sup>

And although Highland’s motion assured the Court that “[b]eneficiaries will not be involved in or have any rights with respect to the administration of the Indemnity Trust or have any right to direct the actions of the Indemnity Trustee with respect to the Indemnity Trust or the assets held in the Indemnity Trust Account,” Highland carved out Mr. Seery (to the extent he is acting in his capacity as Indemnity Trust Administrator) from that exclusion.<sup>36</sup>

**D. Despite Governance Protections Contained in the Confirmation Order, the Plan, and the CTA, with Regard to Indemnification Issues, Mr. Seery Operates with Unfettered Discretion and without Supervision of the Contemplated Oversight Board**

15. Notwithstanding that creditor constituencies voted to support, and the Bankruptcy Court approved, the Plan, understanding that there would be a partially independent, five-member Oversight Board supervising the monetization and distribution of estate assets, that contemplated governance structure has long since been ignored and has failed to safeguard the Claimant Trust. The representations in the Plan, the findings by this Court, and the belief of the Fifth Circuit that Mr. Seery’s conduct as Claimant Trustee would be affirmatively overseen to assure that the Plan would be fully performed, are – at least as to the appropriate use of funds and indemnification -- all false.

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<sup>34</sup> See Subtrust Motion, Dkt. 2491, at ¶ 21 under “Indemnity Trust Administrator” on p. 8.

<sup>35</sup> *Id.* (emphasis added) under “Governance of the Indemnity Trust” on p. 9.

<sup>36</sup> *Id.* (emphasis added).

16. The five-member Board no longer exists. Instead, the Board is comprised of two claims buyers (and current Claimant Trust Beneficiaries)—Muck Holdings and Jessup Holdings—and one ostensibly disinterested member, Richard Katz,<sup>37</sup> about whom no information demonstrating independence was provided with his appointment.<sup>38</sup> Although the CTA mandates that the Board includes two disinterested members, there has only ever been Mr. Katz. That contrivance creates potential governance problems. For example, the Board must in many instances approve actions undertaken by the Claimant Trustee by a “majority” vote.<sup>39</sup> But if any Board member has a conflict or *potential* conflict of interest with respect to an issue at hand (including, without limitation, a pecuniary interest in the issue), then the conflicted member cannot vote.<sup>40</sup> In the case of the current three-member Board, any potential conflict of interest thus derails a majority vote and precludes the Board from approving actions contemplated by the Claimant Trustee.

17. Even without this governance problem, contrary to the impression left by the provisions of the Plan discussed above,<sup>41</sup> the Claimant Trust lacks the requisite safeguards to prevent abuse by the Claimant Trustee. That has proven particularly problematic when it comes to the Claimant Trust’s indemnity obligations. Specifically, the CTA states:

Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to the holders of Trust Interests at least annually the Cash on hand net of any amounts that...(d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (**including, but not limited**

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<sup>37</sup> While Movants have little to go on, if Mr. Katz is the Richard Katz of Torque Point Advisors, he may have interacted with Mr. Seery while he was at Lehman Brothers. *See* TORQUE POINT ADVISORS, <https://www.torquepointllc.com/> (last visited Dec. 20, 2023) (involved in restructuring of Lehman Brothers Holdings Inc.) and Jim Seery, LINKEDIN, (listing Lehman Brothers, 1999-2009) [App. 110-112]. Furthermore, the Claims Purchasers, Muck and Jessup are proposed defendants, together with Mr. Seery and others, in a separate proposed adversary proceeding involving allegations of use of material non-public information. As such, Movant has alleged that at least two members of the Oversight Board are in an alleged conspiracy with Mr. Seery. *See* Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding, Dkt. 3816.

<sup>38</sup> *See* Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust, Dkt. 2801.

<sup>39</sup> *See* CTA, Dkt. 3521-5 at §§ 3.3(b)(i)-(xii), 3.4, 3.8, 3.9, and 4.6(a).

<sup>40</sup> *See id.* at § 4.6(c).

<sup>41</sup> *See* notes 18 to 28 *supra* and accompanying text.

**to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive the termination of the Claimant Trustee)....<sup>42</sup>**

18. In other words, Mr. Seery, both as the Claimant Trustee and as the Indemnity Trust Administrator, effectively has the sole authority to reserve for potential indemnification obligations *without any* Oversight Board or other supervision. This is problematic because Mr. Seery (both as claimant Trustee and as the owner of the Reorganized Debtor's general partner) is one of the principal indemnified parties who stand to benefit from the funding of the indemnification reserve. That means Mr. Seery has a vested financial interest in all decisions he makes regarding the indemnification reserve, including how much to reserve and whether to pay out of the reserve to indemnified parties, including himself. Mr. Seery's unfettered right over the Indemnity Sub-Trust is a material deviation from the Plan: while the Plan always contemplated a conditional indemnification right to certain parties, such right was to be supervised by the Oversight Board. Not only has the Oversight Board with its mechanism for independent members been removed from the supervision of the indemnification *res*, but the sole party with authority over the indemnification *res*, Mr. Seery, is conflicted.

**E. Mr. Seery Has Used the Indemnification Reserve to Avoid Paying Creditors in Full and to Benefit Himself**

19. Mr. Seery has used the Claimant Trust and the Indemnity Subtrust to his own pecuniary advantage. The Claimant Trust now has more than sufficient assets to pay holders of Classes 8 and 9 in full with interest with surplus available to former equity. Yet it has failed to do so, despite the mandate of the CTA that Mr. Seery act expeditiously to maximize value for Claimant Trust Beneficiaries. Instead, he has been funding an increasingly sizeable indemnification reserve

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<sup>42</sup> CTA, Dkt. 3521-5 at § 6.1(a) (emphasis added).

without any discernable justification other than as a subterfuge for avoiding certifying that holders of Class 10 and 11 claims (including Movant) are Claimant Trust Beneficiaries.

20. Based on a consolidated balance sheet filed on July 6, 2023, the Claimant Trust has about \$250 million in assets (of which an estimated \$180 million is cash) and, at that time, only about \$126 million in remaining non-Dondero-related Class 8 and 9 claims.<sup>43</sup>

Highland Claimant Trust			
Summarized Consolidated Balance Sheet <sup>(1)</sup>			
As of May 31, 2023			
The accompanying notes are integral to understanding this balance sheet			
(Estimated and unaudited, \$ in millions)			
	Balance per books	adjustments (see notes)	Adjusted balance
<b>Assets</b>			
Cash and equivalents	\$ 13	\$ -	\$ 13
Disputed claims reserve <sup>(2)</sup>	12	-	12
Other restricted cash	12	-	12
Investments <sup>(3)</sup>	118	(12) <sup>(6)</sup>	106
Notes receivable, net <sup>(4)</sup>	86	(83) <sup>(4)</sup>	3
Other assets	6	-	6
<b>Total assets</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Liabilities</b>			
Secured and other debt	\$ -	\$ -	\$ -
Distribution payable <sup>(2)</sup>	12	-	12
Additional indemnification reserves	-	90 <sup>(5)</sup>	90
Other liabilities	15	13 <sup>(5)</sup>	28
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 27</b>	<b>\$ 103</b>	<b>\$ 130</b>
<b>Book/adjusted book equity (see accompanying notes) <sup>(5)</sup></b>	<b>220</b>	<b>(198)</b>	<b>22</b>
<b>Total liabilities and book/adjusted book equity</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Supplemental Info: <sup>(7)</sup></b>			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	\$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	\$ 139		

21. Since that time, the Post-Confirmation Reports for the period ending September 30, 2023 reflect that an additional \$14,361,077 has been paid to GUCs, with \$6,805,592 being paid to GUC Classes 6 and 7, leaving a balance of \$119,222,451 remaining in Class 8 and 9 claims (subtracting the total “Paid Cumulative” from the “Total Allowed” amounts as reflected on page 7 of those Reports and adding in the amounts paid to GUC Classes 6 and 7).<sup>44</sup> The Reports do not disclose

<sup>43</sup> Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Dkt. 3872 at Ex. A. The Claimant Trust’s asset balance is exclusive of any recovery on litigation against dozens of defendants by Marc S. Kirschner, the Trustee of the Litigation Sub-Trust (the “Kirschner Action”).

<sup>44</sup> See Amended Post-Confirmation Reports of Reorganized Debtor and of the Highland Claimant Trust, Dkts. 3955 and 3956.

the current cash position of the Claimant Trust. Cash may have increased or decreased. But in the worst case, adjusting the cash from amounts shown in the May 31, 2023 Balance Sheet by the amount paid out to Classes 8 and 9, the Trust still has cash of at least \$165 million, and remaining Class 8 and 9 claims that now total less than \$120 million.

22. Notably, the Claimant Trust’s balance sheet assets do not include a fully cash-funded at least \$35 million indemnity account (reportedly now \$50 million) that presumably may be used to pay creditors in the event it is not consumed by the estate’s professionals.<sup>45</sup> In addition, to reduce the Claimant Trust’s book value, Highland purports to add “non-book” adjustments to the balance sheet. One such adjustment gives zero asset value to certain notes payable by Mr. Dondero and his alleged affiliates.<sup>46</sup> However, \$70 million of those notes are now fully bonded by cash deposited in the registry of the District Court.<sup>47</sup>

23. Another accounting “adjustment” creates a \$90 million “additional indemnification reserve,” on top of the at least \$35 (or \$50) million cash indemnity reserve, with no explanation.<sup>48</sup> Indeed, were it not for the at least \$125-140 million in inappropriate indemnity reserves—which is \$100 million more than Debtor originally proposed it would need in insurance coverage when it sought approval of the Indemnity Subtrust—Highland’s creditors could have been paid, the estate closed, and the residual estate returned to equity months if not years ago.

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<sup>45</sup> See Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Dkt. 3872 at Ex. A, Note 1. The information provided does not make it clear whether the \$90 million reserve is reduced by the \$15 million increase in the Indemnity Sub-Trust.

<sup>46</sup> *Id.* at Ex. A.

<sup>47</sup> See Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals, Dkt. 149; Notices of Bonding, Case No. 3:21-cv-00881-X (N.D. Tex.), Dkts. 151, 152, 160-162 [App. 039-078].

<sup>48</sup> See Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Dkt. 3872 at Ex. A.

24. As the Post-Confirmation Reports reveal, all of the administrative claims, secured claims, and priority claims have been paid in full.<sup>49</sup> Thus, as a practical matter, the Claimant Trust could pay the Class 8 and 9 claims in full with interest, Mr. Seery could file the GUC Certification,<sup>50</sup> and Movant (along with other Holders of Class A, B, and C of limited partnership interests) would become a fully vested Claimant Trust Beneficiary under the terms of the CTA.<sup>51</sup> All of these steps could be, and indeed, should have been, completed without any interference from the Indemnity Subtrust Administrator.

25. The failure to pay creditors has had a material impact on the Movant and other Holders of Class A, B, and C of limited partnership interests. In the first nine months of 2023, Debtor and the Claimant Trust accumulated \$48,447,234 in (undisclosed) expenses,<sup>52</sup> for an average of \$5.4 million per month. Even after the voluntary stay of the *Kirschner* litigation, which appears to have been a significant cost-driver, the Debtor and the Claimant Trust have continued to accumulate \$4.6 million per month in expenses. While monies to pay Class 8 and Class 9 Claims remain unimpaired, cash to pay the former equity holders continues to disappear as undisclosed expenses.

26. As explained below in greater detail, the proposed Delaware Complaint sets forth claims that are both plausible under federal pleading standards<sup>53</sup> and “colorable” under this Court’s articulated gatekeeping standard.

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<sup>49</sup> See Amended Post-Confirmation Reports of Reorganized Debtor and of the Highland Claimant Trust, Dkts. 3955 and 3956.

<sup>50</sup> See CTA, Dkt. 3521-5 at §§ 1.1(aa), 5.1(c).

<sup>51</sup> See *id.*, §§ 1.1(h), 5.1.

<sup>52</sup> See Dkt. 3756, 3757, 3888, 3889, 3955, and 3956 (showing Claimant Trust expenditures of \$60,421,756 and Debtor expenditures of \$37,430,919 in Q1 – Q3 2023, then subtracting out \$29,405,441 in distributions to creditors and \$20 million presumably added to the Indemnity Sub-Trust).

<sup>53</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (holding a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face” in order to survive a motion to dismiss pursuant to Rule 12(b)(6)).

### III. ARGUMENT

#### A. The Proposed Complaint Alleges a Colorable Claim That Mr. Seery Should be Removed as Claimant Trustee

27. According to this Court, to state a “colorable” claim under the gatekeeping provision of the Plan (the “Gatekeeper Provision”), a moving party must do more than allege a “plausible” claim for relief—the standard applied by federal district courts in deciding whether a claim can proceed under Federal Rule of Civil Procedure 12(b)(6).<sup>54</sup> Instead, a movant in this Court must survive an “*additional level of review*.”<sup>55</sup> Specifically, the movant bears the “burden of making a prima facie case that its proposed claims are *not without foundation*, are *not without merit*, and are *not being pursued for any improper purpose such as harassment*.”<sup>56</sup> And in deciding whether the movant has met this prima facie burden, the Court “may, and should, take into consideration its *knowledge* of the *bankruptcy proceedings* and *the parties* and any additional evidence presented at the hearing on the Motion for Leave.”<sup>57</sup> The Court termed this new standard the “Gatekeeper Colorability Test.”<sup>58</sup>

28. As set forth below, Movant’s Delaware complaint meets the Court’s Gatekeeper Colorability Test because it sets forth a *prima facie* case under Delaware law that Mr. Seery should

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<sup>54</sup> Movant has objected and continues to object to the Court’s ruling with respect to the standard that should be applied under the Gatekeeper Provision. Movant has appealed the Court’s rulings regarding this standard. *See* Hunter Mountain Investment Trust’s Second Notice of Appeal, Dkt. 3945. No admission is made by or on behalf of Movant in connection with this Motion regarding the “colorability” standard applied by the Court or the Court’s related substantive and procedural rulings. Movant expressly reserves all of Movant’s substantive and procedural rights and waives none of the same in connection with this Motion, the proposed Complaint, or otherwise. Movant believes the proper standard is set forth in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (holding a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face” in order to survive a motion to dismiss pursuant to Rule 12(b)(6)), and that this standard is also satisfied by this Motion.

<sup>55</sup> Memorandum Opinion, Dkt. 3903 at p. 91 (emphasis in original).

<sup>56</sup> *Id.* (emphases in original).

<sup>57</sup> *Id.* (emphases in original).

<sup>58</sup> Movant disagrees with this new test and is challenging this test on appeal at this time. Nothing in this current Motion should be deemed an admission or an acknowledgment of the propriety of this test. *See* Dkt. 3915.

be removed as Claimant Trustee. Moreover, Movant's Delaware complaint is not brought for any improper purpose but, rather, to protect Movant's sizeable residual interest in the Claimant Trust.

**1) Movant's Delaware Complaint Sets Forth a *Prima Facie* Case for Removal of Mr. Seery as Claimant Trustee**

29. Under Delaware law, the Court of Chancery may remove the trustee of a Delaware statutory trust "on [its] own initiative or on petition of a trustor, another officeholder, or beneficiary" in any of five circumstances:

- a) *The officeholder has committed a breach of trust; or*
- b) *The continued service of the officeholder substantially impairs the administration of the trust; or*
- c) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:
  - i. A substantial change in circumstances;
  - ii. *Unfitness, unwillingness or inability of the officeholder to administer the trust or perform its duties properly; or*
  - iii. *Hostility between the officeholder and beneficiaries or other officeholders that threatens the efficient administration of the trust.*

Del. Code Ann. tit. 12, § 3327 (emphases added). As set forth below in greater detail, Movant is an intended beneficiary of the Claimant Trust and, as such, Movant is entitled to ask a Delaware court to remove Mr. Seery as Claimant Trustee because he has engaged in multiple acts warranting his removal under Delaware statute. Accordingly, Movant's complaint sets forth a *prima facie* case, and the Court should grant its Motion and allow the case to proceed.

**2) Movant Has Standing to Seek Mr. Seery's Removal**

30. At the outset, in reality, Movant should be recognized as being "in the money" and a vested beneficiary with the associated standing to pursue the proposed Delaware complaint. In any event, however, Movant also has standing to seek removal of Mr. Seery because Movant is an intended (albeit contingent) beneficiary of the Claimant Trust under the CTA. *All* beneficiaries,

including contingent beneficiaries, have standing under Delaware law to seek to remove a trustee. To argue otherwise – that only “vested” beneficiaries under the CTA may bring such an action – is to impermissibly limit the statute.

31. The Delaware Code does not define the term “beneficiary,” but Delaware courts follow the RESTATEMENT (THIRD) OF TRUSTS,<sup>59</sup> which defines beneficiaries to include contingent beneficiaries:

*Persons who are beneficiaries: in general.* The “beneficiaries” of a trust are the persons or classes of persons, or the successors in interest of persons or class members, upon whom the settlor manifested an intention to confer beneficial interests (vested **or contingent**) under the trust, plus persons who hold powers of appointment (special or general) or have reversionary interests by operation of law. Also included are persons who have succeeded to interests of beneficiaries by assignment, inheritance, or otherwise.<sup>60</sup>

32. Further, the RESTATEMENT expressly contemplates that contingent beneficiaries may file suit to enforce a private trust:

*“Beneficiaries.”* A suit to enforce a private trust ordinarily (see Reporter’s Note) may be maintained by any beneficiary whose rights are or may be adversely affected by the matter(s) at issue. The beneficiaries of a trust include any person who holds a beneficial interest, present or future, vested or contingent.<sup>61</sup>

And “enforcement” extends to “enforcement proceedings in a more comprehensive sense, such as petitions for removal of a trustee . . . even though no breach-of-trust issue is involved.”<sup>62</sup>

33. Delaware courts routinely hold that, in interpreting undefined statutory terms, courts must give those terms a “reasonable and sensible meaning in light of their intent and purpose.” *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 390 (Del. 2010). In ascertaining the “reasonable

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<sup>59</sup> See, e.g., *In re Tr. Under Will of Flint for the Benefit of Shadek*, 118 A.3d 182, 195 (Del. Ch. 2015); *Tigani v. Tigani*, No. CV 2017-0786-KSJM, 2021 WL 1197576, at \*14 (Del. Ch. Mar. 30, 2021), *aff’d*, 271 A.3d 741 (Del. 2022).

<sup>60</sup> RESTATEMENT (THIRD) OF TRUSTS, § 48 cmt. a (2003) (emphasis added).

<sup>61</sup> RESTATEMENT (THIRD) OF TRUSTS, § 94 cmt. b (2012).

<sup>62</sup> *Id.*, § 94, Reporter’s Notes, cmt. a(1).

and sensible meaning” of terms, Delaware courts rely on dictionaries as a source of interpretation.  
*See id.*

34. Black’s Law Dictionary defines “beneficiary” as, among other things, “[s]omeone who is designated to receive the advantages from an action or change . . . or to receive something as a result of a legal arrangement or instrument” and includes both “contingent beneficiar[ies]” and “direct beneficiar[ies]” within the definition without any qualification regarding their rights.<sup>63</sup> By contrast, Black’s distinguishes an “incidental beneficiary” as a “third-party beneficiary, who, though benefiting indirectly, is not intended to benefit from a contract and thus does not acquire rights under the contract.”<sup>64</sup> Nothing in the CTA indicates that Movants are merely “incidental beneficiaries.”

35. In light of the RESTATEMENT and the definition in Black’s Law Dictionary, it is reasonable and sensible to interpret the word “beneficiary” used in Section 3327 of the Delaware statute to include contingent beneficiaries. Rules of statutory interpretation support this conclusion. As the Delaware Supreme Court has explained, a court “may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature.” *Guiricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) (citing *Wilmington Trust Co. v. Barry*, 338 A.2d 575, 578 (Del Super. 1975), *aff’d*, 359 A.2d 664 (Del. 1976)). If the Delaware Legislature had intended that only “vested” beneficiaries could bring an action to remove a trustee, as opposed to any beneficiary (whether residual or contingent), it would have so specified. In this case, the relevant statute—Del. Code Ann. tit. 12, § 3327—uses the term “beneficiary” without defining or limiting it. Accordingly, a court may not do what the Delaware Legislature refused to do by engrafting the term “vested” into the statute to qualify the term “beneficiary.”

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<sup>63</sup> *Black’s Law Dictionary* (11th ed. 2019).

<sup>64</sup> *Id.*

36. Delaware courts refuse to read statutory language restrictively to exclude certain classes of beneficiaries. *See Estate of Tigani*, No. CV 7339-ML, 2016 WL 593169, at \*14 (Del. Ch. Feb. 12, 2016) (holding that the “statute’s use of the general term beneficiary, without any language restricting the class of beneficiary to whom it refers, fairly encompasses a vested beneficiary subject to divestiture”); *Estate of Necastro*, No. C.A. 10,538, 1991 WL 29958, at \*1 (Del. Ch. Feb. 28, 1991) (rejecting a “restrictive reading” of “beneficiary” under 12 Del.C. § 2302(d) and instead holding that “Exceptants [whom the parties characterized as “contingent beneficiaries”] have standing . . . based upon their indirect interest in a share of the estate through their status as beneficiaries of a testamentary trust”).

37. In short, neither the applicable Delaware statute nor Delaware case law limits the term “beneficiary” to “vested” beneficiaries to the exclusion of contingent ones.

38. The Claimant Trustee will no doubt argue that the language of the CTA purportedly strips Movant of its standing to seek removal of the Trustee. In particular, the CTA states that holders of Contingent Trust Interests (including Movant) “shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the ‘GUC Payment Certification’).”<sup>65</sup> The Agreement further states that “Equity Holders will only be deemed ‘Beneficiaries’ under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court.”<sup>66</sup> But Delaware law makes clear that a trust agreement, however worded, may

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<sup>65</sup> CTA, Dkt. 3521-5 at § 5.1(c).

<sup>66</sup> *Id.*

not strip the trustee’s duty of good faith and fair dealing.<sup>67</sup> And in this case, observance of that duty precludes any argument that the language of the CTA undercuts Movant’s standing.

39. Under Delaware law, unless the governing trust agreement says otherwise, the trustee of a statutory trust has those duties set forth in common law, including the duties of loyalty, good faith, and due care. *See* Del. Code Ann. tit. 12, § 3809; *Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at \*11 (Del. Ch. Feb. 23, 2023). And while a governing trust agreement may expressly disclaim these duties (although this one does not), Delaware law prohibits the elimination of the duty of good faith and fair dealing. *In re National Collegiate Student Loan Trusts Litigation*, 251 A.3d 116, 185-86 (Del. Ch. 2020) (“While parties may agree to waive default fiduciary duties, the DSTA forbids parties from eliminating the “implied contractual covenant of good faith and fair dealing.”) (citing Del. Code. Ann. tit. 12, § 3806(c)).

40. The duty of good faith and fair dealing is particularly important here, where Movant’s status as a “beneficiary” under the CTA is purportedly dependent upon Mr. Seery’s discretion to file a GUC Certification declaring Movant’s status as such. “Stated in its most general terms, the implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain.” *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (internal quotations omitted). “Thus, parties are liable for breaching the covenant when their conduct frustrates the overarching purpose of the contract by taking advantage of their position to control implementation of the agreement’s terms.” *Id.* (internal quotations omitted).

41. Given the purpose of the covenant, “it is possible to rest a claim of breach of the implied covenant of good faith and fair dealing on the assertion that defendants have deliberately

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<sup>67</sup> The CTA is governed by Delaware law. *Id.* at § 11.10.

prevented the occurrence of conditions precedent.” *Injective Labs Inc. v. Wang*, No. CV 22-943-WCB, 2023 WL 3318477, at \*7 (D. Del. May 9, 2023) (quoting *Benerofe v. Cha*, No. 14614, 1998WL 83081, at \*6 (Del. Ch. Feb. 20, 1998)). See also *Snow Phipps Grp., LLC v. Kcake Acquisition, Inc.*, No. CV 2020-0282-KSJM, 2021 WL 1714202, at \*53 (Del. Ch. Apr. 30, 2021) (noting the duty of good faith and fair dealing “requires some cooperation ... either by refraining from conduct that will prevent or hinder the occurrence of that condition or by taking affirmative steps to cause its occurrence”) (internal quotes omitted).

42. Mr. Seery’s failure and refusal to pay the Class 8 and 9 creditors, in an attempt to prevent the Contingent Interest Holders’ interests from vesting under the terms of the CTA, falls squarely within the scope of the duty of good faith and fair dealing. In *Injective Labs Inc. v. Wang*, the defendant asserted a counterclaim for the breach of the implied duty of good faith and fair dealing. The defendant argued that plaintiff breached the implied duty by “sending a belated request that [defendant] satisfy a condition precedent, knowing that it was effectively impossible for him to do so.” *Injective Labs Inc. v. Wang*, 2023 WL 3318477, at \*7. The court rejected plaintiff’s motion to dismiss the counterclaim, holding “[t]hat allegation, and in particular the allegation that [plaintiff] knew that [defendant] would be unable to satisfy the condition precedent . . . is directed to the type of conduct that typically falls within the scope of the implied duty of good faith and fair dealing.” *Id.*

43. In another case, the Court of Appeals for the Seventh Circuit affirmed summary judgment against a defendant because the defendant “did not exercise good faith under the contract by attempting to hinder the occurrence of the condition precedent in the contract.” *Unit Trainship, Inc. v. Soo Line R. Co.*, 905 F.2d 160, 162-63 (7th Cir. 1990). There, the parties entered a contract for the running of a unit-train between Chicago and Seattle. *Id.* at 161. Because the running of the unit-train required the approval of the Interstate Commerce Commission (“ICC”), the parties filed a joint petition with the ICC seeking approval. *Id.* Thereafter, one party moved to withdraw from the ICC

proceeding and failed to participate in the joint petition, thereby stymieing the condition precedent to the performance of the contract. *Id.* The Seventh Circuit, applying Illinois law, which is similar in this regard to Delaware law, held that “where a party’s obligation is subject to a condition precedent, a duty of good faith and fair dealing is imposed upon that party to cooperate and to not hinder the occurrence of the condition.” *Id.* at 163.

44. These cases inform the Claimant Trustee’s contractual duties under Delaware law. In *Injective Labs Inc.*, the plaintiff/counterclaim defendant prevented the performance of a condition precedent, which violated the duty of good faith and fair dealing. 2023 WL 3318477, at \*7. In *Unit Trainship*, one of the parties to the relevant contract prevented the occurrence of a condition precedent, which violated the duty of good faith and fair dealing. 905 F.2d at 163. Similarly, here the Claimant Trustee is deliberately refusing to pay the unsecured creditors in Classes 8 and 9 with interest, thereby breaching his duty to pay Classes 10 and 11. That violates the Trustee’s duty of good faith and fair dealing and fatally undermines any argument that Movant lacks standing to seek removal of the Trustee.

45. As other RESTATEMENT jurisdictions have recognized, Mr. Seery’s conduct warrants treating those classes as fully vested. “[V]esting cannot be postponed by unreasonable delay in distributing an estate and [] when there is such delay, contingent interests vest at the time distribution *should* have been made.” *Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) (emphasis added) (discussed in RESTATEMENT (SECOND) OF TRUSTS, § 198 (1959)); *see also Edwards v. Gillis*, 146 Cal.Rptr.3d 256, 263 (Cal.App. 4 Dist., 2012) (“when there is [unreasonable] delay contingent interests vest at the time distribution should have been made.”). As set forth above, the Claimant Trust had sufficient assets to pay unsecured creditors in Classes 8 and 9 in full with interest at least as early

as July 2023, and in all probability as early as September 2022.<sup>68</sup> And the CTA requires Mr. Seery as Claimant Trustee to “make timely distributions and not unduly prolong the duration of the Claimant Trust.”<sup>69</sup> Had Mr. Seery fulfilled that mandate, he could and should have distributed remaining funds to Classes 8 and 9 by July 2023, filed the GUC Certification with the Court, and begun distributing remaining assets to Classes 10 and 11. In short, Movant’s interests were properly vested under the CTA many months ago, and Delaware law therefore treats Movant as a Claimant Trust Beneficiary, regardless of the language of the CTA.

46. Indeed, any argument that the CTA precludes Movant from vindicating its rights (including by seeking removal of the Trustee) only underscores why Delaware law is crafted the way it is. Were it not for the duty of good faith and fair dealing imposed by Delaware law, Mr. Seery arguably could increase the funds set aside for indemnification continually, hold final distributions to Class 8 and Class 9 creditors in abeyance, and refuse to file the GUC Certification based on the theoretical possibility that he might in the future need to draw upon more than the originally contemplated indemnity reserve of \$25 million to pay his own legal expenses (all while drawing a salary of \$150,000 per month). And it appears that, for now, Mr. Seery is content to do just that. This is exactly the kind of conflict that Section 3327 of the Delaware Code was designed to prevent, and the duty of good faith and fair dealing in Delaware precludes the Claimant Trustee from relying on the language of the CTA to prevent the Delaware courts from remedying the conflict. Under these circumstances, Movant has standing to proceed under Delaware law.

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<sup>68</sup> Two of the estate’s major private equity positions sold in May 2022, and the remaining largest positions sold in September 2022. The May 2022 assets were Cornerstone Healthcare Group [*see* App. 013-017] and MGM [*see* App. 009-012]. The September 2022 positions were CCS Medical [*see* App. 018-022] and Trussway [*see* App. 023-025].

<sup>69</sup> CTA, Dkt. 3521-5 at § 3.2(a).

### 3) Delaware Law Mandates Movant's Complaint Proceed in Delaware Court

47. Under Delaware law, beneficial owners of a trust are entitled to seek redress in the courts of Delaware, regardless of the language of the relevant trust agreement: “Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State, *a beneficial owner who is not a trustee may not waive its right to maintain a legal action or proceeding in the courts of the State with respect to matters relating to the organization or internal affairs of a statutory trust.*” Del. Code Ann. tit. 12, § 3804(e) (emphasis added). This is because the removal of a trustee is a “matter[] relating to the organization or internal affairs of a statutory trust.” *United Bhd. of Carpenters Pension Plan v. Fellner*, C.A. No. 9475-VCN, 2015 WL 894810, at \*2 n. 13 (Del. Ch. Feb. 26, 2015). Where a company’s internal affairs are involved, Delaware law disregards the forum selection clause in the parties’ trust agreement. *Id.*

48. Because Movant’s Delaware complaint seeks relief relating to the internal affairs of the Claimant Trust, Movant is entitled to have its dispute decided by the courts of Delaware, regardless of any contrary choice of forum clause in the CTA.<sup>70</sup> The Court should permit Movant to file its Delaware complaint in the Delaware Chancery Court.

### 4) There Are Multiple Grounds for Seery’s Removal

49. As set forth in the proposed Delaware Complaint, Mr. Seery’s removal as Claimant Trustee is warranted for multiple reasons. Specifically, Mr. Seery has breached his duty of loyalty by failing to pay creditors, failing to file the GUC Certification, and failing to certify that equity holders in Classes 10 and 11 (of which Movant is the largest) are vested under the CTA. Seery has failed to act expeditiously as required under the terms of the CTA,<sup>71</sup> and has failed to maximize the value of the Claimant Trust for the benefit of the Claimant Trust Beneficiaries by filing unnecessary

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<sup>70</sup> See CTA, Dkt. 3521-5 at § 11.11.

<sup>71</sup> See, e.g., *id.* at §§ 2.2(b), 2.3(b)(i), 3.2(a).

proceedings, including the Kirschner Action, and spending inordinate amounts of cash. Those breaches of duty warrant Mr. Seery's removal under Del. Code Ann. tit. 12, § 3327(1). Further, Mr. Seery's roles as both Claimant Trustee and as Indemnity Subtrust Administrator substantially impairs the administration of the Claimant Trust, warranting his removal under Del. Code Ann. tit. 12, § 3327(2). In addition, Mr. Seery's removal is warranted under Del. Code Ann. tit. 12, § 3327(3)(b) and (c) because he is unwilling to perform his duties as Claimant Trustee, and has manifested a personal hostility toward, and conflict with, Movant and the holders of Contingent Trust Interests.

**a) Mr. Seery Has Breached His Duty of Loyalty**

50. The facts set forth above demonstrate without doubt that Mr. Seery has breached his duty of loyalty in administering the Claimant Trust. A trustee breaches the duty of loyalty by acting in his own self-interest “[i]nstead of evaluating what was in the best interests of [a] [t]rust.” *Paradee v. Paradee*, No. 4988-VCL, 2010 WL 3959604, at \*10 (Del. Ch. Oct. 5, 2010). “Self-interested transactions involving a fiduciary or one in a confidential relationship with another are presumptively fraudulent and voidable in equity. If the transaction is challenged, the burden of persuasion to justify upholding the transaction is on the fiduciary.” *Hardy v. Hardy*, No. CIV.A. 7531-VCP, 2014 WL 3736331 at \*8 (Del. Ch. July 29, 2014) (internal quotations omitted). Significantly, and importantly in this case, an inequitable action taken “does not become permissible simply because it is legally possible” within the letter of the law or the language of an agreement. *Coster v. UIP Companies, Inc.*, 255 A.3d 952, 953 (Del. 2021) (citing *Schnell v. Chris-Craft Indus., Inc.*, 285 A.2d 437, 439 (Del. 1971)). Self-dealing amounts to a breach of duty of loyalty. *See Tagliatalata v. Galvin*, No. 5841-MA, 2015 WL 757880, at \*4 (Del. Ch. Feb. 23, 2015); *Walls v. Peck*, Civ. A. No. 497, 1979 WL 26236, at \*4 (Del. Ch. Oct. 24, 1979); GEORGE GLEASON BOGERT, *THE LAW OF TRUSTS AND TRUSTEES*, § 543 (3d ed. 2019) (“The trustee must administer the trust with complete loyalty to the

interests of the beneficiary, without consideration of the personal interests of the trustee or the interests of third persons.”).

51. Indeed “[u]nlike corporate law, ‘[u]nder trust law, self-dealing on the part of a trustee is virtually prohibited.’” *Stegemeier v. Magness*, 728 A.2d 557, 563 (Del. 1999) (citing *Oberly v. Kirby*, 592 A.2d 445, 466 (Del. 1991)). As a result, the interested trustee bears the burden of persuasion to justify upholding the transaction. *Id.*

52. In this case, as the Delaware Complaint alleges, Mr. Seery has breached his duty of loyalty. That breach was inevitable given the manner in which Mr. Seery and Highland constructed the Claimant Trust and the Indemnity Subtrust. As set forth above, Mr. Seery is the Trustee of the Claimant Trust with an absolute duty to manage and administer that trust for the benefit of the Trust’s beneficiaries. But Mr. Seery is also the Indemnity Trust Administrator charged with funding and spending an indemnity reserve for the benefit of Indemnified Parties, including himself. His duties as Claimant Trustee and Indemnity Subtrustee are in hopeless conflict as a result of this arrangement.

53. As now apparent, that conflict has manifested to the detriment of the intended beneficiaries of the Claimant Trust, including Movant. Essentially, Mr. Seery is seeking to hold the assets of the Claimant Trust hostage by reserving an increasing and inexplicably gigantic indemnity reserve to benefit the Indemnified Parties, including himself.

54. But consider the nature of claims potentially triggering indemnification, such as the insider trading claims against Mr. Seery, Muck and Jessop.<sup>72</sup> If the potentially indemnified parties prevail, there can be no judgment to indemnify. If the potentially indemnified parties lose, the nature of the claim is such that there would be no indemnity owed – so how could \$125 million in

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<sup>72</sup> See Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding, Dkt. 3816.

indemnification reserves be needed? That large indemnity reserve is antithetical to the interests of the intended beneficiaries of the Claimant Trust.

55. Moreover, Mr. Seery's conduct in contravention of his duty of loyalty to beneficiaries of the Claimant Trust contravenes the language and intent of the Plan itself. The Plan does not require holders of Class 10 and 11 claims (or parties related thereto) to grant releases of liability to the Claimant Trustee or the Indemnified Parties, but by refusing to pay out Classes 8 and 9 and refusing to issue the required GUC Certification in favor of funding up to \$125 million in indemnity reserves, that is functionally what Mr. Seery is seeking to leverage Classes 10 and 11 (and even other non-parties) to provide.<sup>73</sup>

56. Forcing Classes 10 and 11 to bear the cost of Mr. Seery's indemnification reserve also goes beyond what the CTA allows. Paragraph 8.2 of that Agreement expressly allows parties to sue Mr. Seery and other indemnified parties for actions that constitute fraud, willful misconduct, or gross negligence, provided that they seek Bankruptcy Court approval to proceed on such claims. In other words, not even the CTA contemplates that Classes 10 and 11 would grant full, general releases to the Indemnified Parties, much less fund their defense for cognizable claims under the Agreement. By trying to insulate himself from *all* claims as a condition of performing his mandatory duties under the CTA, Mr. Seery is putting his personal self-interest ahead of the beneficiaries of the Trust.

57. There is ample case law holding that a trustee may not make a release (or its equivalent) a condition of performing his duties to a trust. Indeed, as the Delaware Chancery Court has explained, “[a]lthough the practice of demanding a release is widespread, a trustee who insists on a release as the price [of] doing what is in the best interests of the trust—and what the trustee's fiduciary duties therefore require—engages in self-interested conduct by extracting a personal benefit

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<sup>73</sup> Highland Parties' Objection to Motion to Stay and Motion to Compel Mediation, Dkt. 3796, at fn. 4.

at the expense of the trust and its beneficiaries.” *J.P. Morgan Tr. Co. of Delaware, Tr. of Fisher 2006 Tr. v. Fisher*, No. CV 12894-VCL, 2021 WL 2407858, at \*22 n.9 (Del. Ch. June 14, 2021), *judgment entered sub nom* (noting that “[t]he trustee’s insistence on a release may also fuel the beneficiaries’ concern about improper conduct, as it did in this case”).

58. Similarly, the Southern District of New York has held that a fiduciary’s refusal to distribute assets without getting a release can constitute a breach of fiduciary duty:

Defendants also argue that the demand for a release was not a breach of fiduciary duty because there is no merit to KeyBank’s underlying claims. I have held for the reasons stated above that some of KeyBank’s claims have been properly pleaded and survive a motion to dismiss. Even if that were not the case, however, the First Amended Complaint properly alleges that the refusal to deliver stock to which KeyBank was entitled – based on the defendants’ self-interested insistence that they be released from KeyBank’s claims – was an abuse of defendants’ control of the buyer that had nothing to do with the buyer’s legitimate business interests and that instead served only the self-interests of the defendants themselves.

*Keybank Nat’l Ass’n v. Franklin Advisers, Inc.*, 616 B.R. 14, 44 (Bankr. S.D.N.Y. 2020).

59. In yet another similar case, the Southern District of New York held that a trustee breached its fiduciary duties by insisting on indemnification before carrying out its contractual obligations. In *FMS Bonds, Inc. v. Bank of New York Mellon*, the plaintiffs, holders of industrial revenue bonds, filed suit for breach of contract and breach of fiduciary duty against the indenture trustee responsible for servicing the bonds. No. 15 CIV. 9375 (ER), 2016 WL 4059155, at \*1 (S.D.N.Y. July 28, 2016). The plaintiffs alleged the trustee failed to file a timely proof of claim in the bankruptcy proceedings on behalf of the entities obligated to make payments under the bonds. *Id.* at 7. The trustee offered to file a late proof of claim, but only if the plaintiffs agreed to “further indemnification protection” for the trustee. *Id.* The plaintiffs argued that “where the Trustee’s ‘gross negligence’ prevented bondholders from collecting on the Bonds, the Trustee’s inaction and insistence on further indemnification in order to rectify that gross negligence was a breach of the Trustee’s fiduciary duties.” *Id.* at 13. The trustee moved to dismiss plaintiffs’ breach of fiduciary duty

claim, and the court denied the motion, stating that the plaintiffs' allegations "that the Trustee . . . breached its fiduciary duties by insisting on indemnification before taking further action" properly pleaded a breach of fiduciary duty claim. *Id.* at 14.

60. The reasoning of these cases applies with equal force here. Mr. Seery is obligated under the CTA to administer the Claimant Trust expeditiously, with an aim toward maximizing value for the Trust's intended beneficiaries, and to distribute the Claimant Trust's assets to those beneficiaries within a reasonable time. Instead of doing so, Mr. Seery is increasing the indemnity reserve so he can indemnify himself and others against future, unidentified lawsuits, potentially in perpetuity. In other words, like the trustees in *Fisher*, *Keybank National Association*, and *FMS Bonds*, Mr. Seery is refusing to comply with his obligations under the relevant trust agreement to extract some benefit for himself. That is a breach of the duty of loyalty, and that is a sufficient basis for Movant to seek Mr. Seery's removal under Delaware law.

**b) Mr. Seery's Continued Service Substantially Impairs the Administration of the Trust**

61. Mr. Seery's dual roles as Claimant Trustee and Indemnity Subtrust Administrator create an irreconcilable conflict of interest that substantially impairs the administration of the trust. As Claimant Trustee, Mr. Seery has duties to the Claimant Trust Beneficiaries to timely pay the remaining Class 8 and 9 claims, and file the GUC Certification. However, Mr. Seery, as an Indemnified Party as well as Indemnity Subtrust Administrator, instead is using the assets of the Claimant Trust to fund a \$35-50 million cash reserve to the Indemnity Subtrust and create an additional \$90 million "indemnity reserve." In other words, Mr. Seery has chosen to pursue creation of an "indemnity wall" rather than perform his duties as Claimant Trustee. Under these circumstances, Mr. Seery's continued service as Claimant Trustee while he also serves as Indemnity Subtrust Administrator impairs the administration of the Claimant Trust, warranting his removal as Trustee.

**c) Mr. Seery Is Hostile to Movant, the Largest Class 10 Equity Holder**

62. “Removal of a trustee is appropriate where ‘there exists . . . hostility between the trustee[] and the beneficiaries that threatens the efficient administration of the trust.’” *Matter of Jeremy Paradise Dynasty Tr.*, No. CV 2021-0354-KSJM, 2021 WL 3625375, at \*1 (Del. Ch. Aug. 17, 2021). Where, as here, hostility rises to the point of preventing trust funds from being distributed, removal is appropriate. *See, e.g., Tagliatela v. Galvin*, No. CIV.A. 5841-MA, 2013 WL 2122044, at \*3 (Del. Ch. May 14, 2013) (“The ongoing hostility and lack of communication and trust between the Trustee and three of her siblings have prevented the trust funds from being distributed to the six beneficiaries in a reasonable time after the settlor’s death. . . . I conclude that it is in the best interest of the beneficiaries here to remove [the Trustee.]”).

63. There can be no doubt that Mr. Seery is hostile to Movant and the holders of Class 10 and 11 claims (the holders of Contingent Trust Interests under the CTA). Among other things:

- Mr. Seery has provided testimony on repeated occasions accusing Class 10 and 11 claims holders of “bad faith” and other misconduct;
- Mr. Seery has helped facilitate lawsuits against Class 10 and 11 claims holders, including the *Kirschner* Action;
- Mr. Seery has helped facilitate the filing of motions against Class 10 and 11 claims holders, including a Motion to Deem the Dondero Parties Vexatious Litigants, currently pending in the United States District Court for the Northern District of Texas;
- Mr. Seery not only has failed to communicate with the Class 10 and 11 claim holders about the estate’s finances, but opposes their efforts to obtain such information;<sup>74</sup> and
- Mr. Seery has resisted and opposed relief sought by Class 10 and 11 claims holders, even where that relief was reasonable and designed to benefit the estate as a whole.<sup>75</sup>

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<sup>74</sup> Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust’s Motion to Dismiss Complaint Case No. 23-03038 (N.D. Tex.) at Dkt. 14 [App. 079-109]. The claim holders have requested this information since at least June 2022 (Dkt. 3382), which was approximately \$80 million in estate expenses ago. *See* ¶ 25 *supra*.

<sup>75</sup> *See* Highland Capital Management, L.P.’s Memorandum of Law in Support of its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief, Case No. 21-00881 (N.D. Tex.), Dkt. 137 [App. 031-038] (wherein the Reorganized Debtor (under the control of the Claimant Trust), defines “Dondero Entities” as including HMIT (Movant herein) at fn. 1; states “The Dondero Entities—all of which are dominated and controlled by or acting in concert with

64. The hostility described herein between Mr. Seery and the beneficiaries of the Claimant Trust is more than sufficient to warrant Mr. Seery's removal. In *Tagliatela*, the court removed the trustee because "ongoing hostility and lack of communication" between the trustee and beneficiaries "prevented the trust funds from being distributed" to the beneficiaries in a reasonable time. 2013 WL 2122044, at \*3. Similarly, here, the hostility between Mr. Seery and the beneficiaries is so extreme that Mr. Seery refuses to administer the trust funds without first establishing an indemnity fund with potentially more than one hundred million dollars. That is impermissible under Delaware law.

65. For all the foregoing reasons, Movant's Delaware complaint sets forth a *prima facie* claim for removal of Mr. Seery as Trustee of the Claimant Trust, consistent with the applicable legal standard and also even consistent with this Court's new Gatekeeper Colorability Test.

**B. Movant Seeks to File its Delaware Complaint for a Proper Purpose**

66. Even though Movant does not agree with the Court's Gatekeeper Colorability Test, Movant can readily satisfy the next element of that test because it has a legitimate and proper reason to seek Mr. Seery's removal under Delaware law. As the allegations above make clear, Movant has no other legal avenue available to protect its sizeable interest in the assets of the Claimant Trust.

67. The latest information from the Highland Parties is that the Indemnity Subtrust now holds reportedly \$50 million in cash, and that an additional \$90 million of the Claimant Trust assets have been held in an indemnity reserve. That means that at least \$140 million is currently being held for indemnity—on the sole authority of Mr. Seery in order to protect himself. Contrary to the

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Dondero, HCMLP's co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP's confirmed Plan." *Id.*, at ¶ 1.; "Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP's reorganization, commencing new (and frivolous) litigation against HCMLP and its management both insider and outside of Bankruptcy Court..." *Id.* at ¶ 4; "Separately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary duty and other obligations to HMIT—a prepetition equity holder.... However, HMIT's putative complaint is emblematic of the Dondero Entities' unceasing litigation--..." *Id.* at ¶ 30); Dec. 14, 2020 Depo. Tr. at 37:22-25 [App. 003]; Aug. 4, 2021 Hr'g Tr. At 66:15-18 [App. 007]; June 2, 2023 Depo. Tr. At 113:17-20 [App. 028].

representations in the Subtrust Motion, the amount now held for indemnity is 560% of the original \$25 million represented. By comparison, for the pre-effective date period, the entire bankruptcy case only cost approximately \$40 million in administrative fees through August 10, 2021.<sup>76</sup>

68. The Plan and Trusts have now turned into nothing more than vehicles for Mr. Seery to leverage to seek to force Class 10 and 11 Equity Holders, and even related party non-equity holders, to deliver releases and other consideration to Mr. Seery and the Indemnified Parties. By his conduct, Mr. Seery seeks the complete exculpation the Fifth Circuit denied him.<sup>77</sup> Under the guise of “indemnity,” he holds assets that belong to beneficiaries, vested and contingent, entirely hostage at his sole and unfettered discretion. Meanwhile, Seery continues to collect his monthly compensation of \$150,000 per month, plus authorize over \$5 million in undisclosed monthly expenses. The present circumstances demonstrate that, if not stopped, Seery will continue to use his position in this manner until the Trusts are exhausted and the Plan is entirely frustrated. The creation of the Trusts and limitless authority of Mr. Seery have resulted in a conflict of interest which cannot be resolved without a court’s appropriate, and entirely necessary, equitable resolution.

69. In short, the claims to remove Mr. Seery as Claimant Trustee are not without foundation, not without merit, and not being pursued for an improper purpose. Based on the Delaware law described herein, Movant meets the applicable legal standard, and also even this Court’s Gatekeeper Colorability Test, and the Court should allow Movant to proceed with its complaint in Delaware.

#### **IV. CONCLUSION**

For all of the forgoing reasons, this Motion should be granted.

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<sup>76</sup> September 30, 2023, Post-confirmation Reports, Dkt. Nos. 3955 and 3956, p.2.

<sup>77</sup> *In re Highland Capital Management, L.P.*, 48 F.4<sup>th</sup> 419, 435 (5<sup>th</sup> Cir. 2022).

WHEREFORE, Movant requests the entry of an order i) granting this Motion for Leave; ii) determining that the Gatekeeping Provision is satisfied as applied to the Delaware Proceeding; and iii) authorizing Movant to file the Delaware Complaint.

Respectfully submitted,

**STINSON LLP**

*/s/ Deborah Deitsch-Perez*

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*Counsel for The Hunter Mountain Investment Trust*

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on December 21, 2023, counsel for Hunter Mountain Investment Trust conferred with opposing counsel regarding this motion and opposing counsel indicated that the Debtor is opposed.

/s/Deborah Deitsch-Perez  
Deborah Deitsch-Perez

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 1, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez  
Deborah Deitsch-Perez

# EXHIBIT 1

002353

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

HUNTER MOUNTAIN INVESTMENT TRUST )  
 )  
 Plaintiff, )  
 ) C.A.No. \_\_\_\_\_  
 v. )  
 )  
 JAMES P. SEERY, JR. )  
 )  
 Defendant. )

**COMPLAINT TO REMOVE THE TRUSTEE**

Plaintiff, Hunter Mountain Investment Trust (“HMIT”), by and through its undersigned counsel, hereby brings the following Complaint seeking the removal of Defendant James P. Seery, Jr. as Trustee of the Highland Claimant Trust (the “Claimant Trust”) pursuant to 12 *Del. C.* § 3327(1), (3)(b), and/or (3)(c). In support, HMIT respectfully states as follows:

**I. PARTIES**

1. Plaintiff HMIT is a Delaware statutory trust that was formerly the largest equity holder in Highland Capital Management, L.P. (the “Debtor”), holding a 99.5% limited partnership interest. HMIT is now the largest holder of a Contingent Trust Interest in the Claimant Trust pursuant to the terms of the Claimant Trust Agreement (“CTA”).<sup>1</sup>

<sup>1</sup> See Exhibit 1.

2. Defendant James P. Seery, Jr. (“Mr. Seery or Seery”) is an individual citizen and resident of the State of New York. Mr. Seery may be served with process at 100 Crescent Court, Suite 1805, Dallas, Texas 75201. Mr. Seery acts as the Claimant Trustee under the CTA and as Trust Administrator of the Indemnity Subtrust as described herein. Mr. Seery may be served with process pursuant to 10 *Del. C.* § 3114 because he serves as the trustee of a Delaware statutory trust.

## II. JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 10 *Del. C.* § 341 and 12 *Del. C.* § 3327.

## III. STANDING

4. HMIT seeks to have this Court remove Mr. Seery as Claimant Trustee of the Claimant Trust pursuant to 12 *Del. C.* § 3327. HMIT has standing as Plaintiff in this proceeding because it is a beneficiary within the meaning of Delaware trust law and, at a minimum, a contingent beneficiary under the terms of the Claimant Trust.

## IV. FACTS

### A. The Claimant Trust Agreement

5. In a chapter 11 bankruptcy proceeding in the Bankruptcy Court for the Northern District of Texas, the Debtor filed and the Bankruptcy Court confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as modified)* (*In re Highland Capital Management LP*, Case No. 19-34054-sgj11 in the

United States Bankruptcy Court for the Northern District of Texas, Doc. 1943 at Ex. A) (the “**Plan**”).

6. Pursuant to the Plan, assets of the bankruptcy estate of the Debtor were transferred to the Claimant Trust.

7. The CTA identifies different “classes” of trust interests. In particular, Class 8 interests were distributed to Holders of Allowed Class 8 General Unsecured Claims; Class 9 interests were distributed to Holders of Allowed Class 9 Subordinated Claims; Class 10 interests were distributed to Holders of Allowed Class 10 Class B/C Limited Partnership Interests; and Class 11 interests were distributed to Holders of Allowed Class 11 Class A Limited Partnership Interests.

8. The CTA directs Seery, as Claimant Trustee, “to litigate and settle Claims in Class 8 and Class 9.” (CTA at ¶ 2.3(b)(ii).)

9. After Class 8 and Class 9 interest holders are paid in full, the CTA directs Seery, as Claimant Trustee, to file with the Bankruptcy Court a “GUC Payment Certification.” (CTA at ¶ 5.1(c).)

10. As described in the CTA, Class 10 and Class 11 interests are “Contingent Trust Interests,” meaning they will not “vest” under the terms of the CTA until Class 8 and Class 9 interest holders are paid in full and the Claimant Trustee files the GUC Payment Certification. (CTA at ¶¶ 1.1(m) and 5.1(c).)

11. Among other things, the CTA requires Mr. Seery to pay the remaining Class 8 and 9 claims in full and file the GUC Certification, thereby “vesting” the Class 10 and 11 Equity Interests under the terms of the CTA. (CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.) In addition, he has the duty to do so timely and “not unduly prolong the duration of the Claimant Trust.” (CTA at ¶¶ 2.2(b), 3.2(a), and 3.3(a).)

12. The Claimant Trust expressly does not indemnify parties for acts which are determined by order a court of competent jurisdiction to constitute willful fraud, willful misconduct, or gross negligence. (CTA at ¶ 8.2.)

**B. The Indemnity Subtrust**

13. Months after confirmation of the chapter 11 Plan and creation of the Claimant Trust, the Bankruptcy Court authorized the creation of the Indemnity Subtrust. The Indemnity Subtrust was created to provide a source of conditional indemnity, in lieu of liability insurance coverage, to parties identified as “Indemnified Parties” in Section 8.2 of the CTA, including Mr. Seery and the Claimant Trust Oversight Board to the extent they otherwise qualify under the terms of the CTA. According to the terms of the motion filed with the bankruptcy court seeking to create the Indemnity Subtrust, Mr. Seery placed himself in the position of Trust Administrator of the Indemnity Subtrust (to whom the trustee of the Indemnity Subtrust answers). Accordingly, Mr. Seery has exercised sole control of both the

Claimant Trust and Indemnity Subtrust with respect to all matters concerning indemnity.

14. Mr. Seery has an irresolvable conflict of interest whereby he has exclusive control over the Indemnity Subtrust—to the detriment of the Class 8 and 9 Claimants, and the Class 10 and 11 Equity Interests. In such position, Mr. Seery enjoys power in his sole and absolute discretion to direct administration of all aspects of the Indemnity Subtrust for his own benefit, and all matters relating to indemnity with respect to the Claimant Trust.

15. The sole conditional beneficiaries of the Indemnity Subtrust are the Indemnified Parties as defined in Section 8.2 of the Claimant Trust Agreement, including Seery himself and the Claimant Trust Oversight Board.

**C. The Claimant Trust Has Sufficient Assets to Pay Class 8 and 9 Interest Holders**

16. Based on a consolidated balance sheet filed on July 6, 2023, the Claimant Trust has about \$250 million in assets (of which \$180 million is cash) and only about \$126 million in Class 8 and 9 claims.

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**  
**The accompanying notes are integral to understanding this balance sheet**  
**(Estimated and unaudited, \$ in millions)**

	Balance per books	adjustments (see notes)	Adjusted balance
<b>Assets</b>			
Cash and equivalents	\$ 13	\$ -	\$ 13
Disputed claims reserve <sup>(2)</sup>	12	-	12
Other restricted cash	12	-	12
Investments <sup>(3)</sup>	118	(12) <sup>(4)</sup>	106
Notes receivable, net <sup>(4)</sup>	86	(83) <sup>(4)</sup>	3
Other assets	6	-	6
<b>Total assets</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Liabilities</b>			
Secured and other debt	\$ -	\$ -	\$ -
Distribution payable <sup>(2)</sup>	12	-	12
Additional indemnification reserves	-	90 <sup>(5)</sup>	90
Other liabilities	15	13 <sup>(5)</sup>	28
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 27</b>	<b>\$ 103</b>	<b>\$ 130</b>
<b>Book/adjusted book equity (see accompanying notes) <sup>(5)</sup></b>	<b>220</b>	<b>(198)</b>	<b>22</b>
<b>Total liabilities and book/adjusted book equity</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Supplemental info: <sup>(7)</sup></b>			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	\$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	\$ 139		

17. Notably, the Claimant Trust’s balance sheet assets do not include a fully cash-funded at least \$35 million indemnity account (reportedly now \$50 million) that presumably may be used to pay creditors to the extent it is not consumed by the estate’s professionals. (See *Notice of Filing of Current Balance Sheet of the Highland Claimant Trust*, Dkt. 3872 at Ex. A, Note 1.)<sup>2</sup> To reduce the Claimant Trust’s book value, the Debtor purports to add “non-book” adjustments to the balance sheet. One such adjustment gives zero asset value to the notes payable by alleged affiliates of Jim Dondero. (See *id.* at Ex. A.) However, \$70 million of those notes are fully bonded by cash deposited in the registry of the district court. See Case No. 3:31-cv-00881-X (N.D. Tex.), *Order Granting Joint Agreed Emergency Motion*

<sup>2</sup> See Exhibit 2.

*for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals* [Dkt. 149] and *Notices of Bonding* [Dkts. 151, 152, and 160-162].<sup>3</sup>

18. Additionally, Mr. Seery declared a supplemental “indemnity account” now holding approximately \$90 million, on top of the \$35 (or \$50) million cash indemnity reserve, for the benefit of the Indemnified Parties (including Mr. Seery).

19. Were it not for the inappropriate \$125 million (or more) indemnity reserve, Debtor’s creditors could and should have been paid, the estate closed and the residual returned to former equity months ago.

20. As a practical matter, the Claimant Trust could pay the Class 8 and 9 claims in full with interest, Mr. Seery could file the GUC Certification, and the Equity interests, including Plaintiff’s, would fully “vest” under the terms of the CTA. All of these steps could be, and indeed, should have been, completed without any interference with the Indemnity Sub-Trust or Indemnity Trust.

**D. Mr. Seery Refuses to Pay Class 8 and 9 Interest Holders, and thereby Seeks to Prevent HMIT’s Class 10 Interests from Vesting, to Advance His Own Self-Interest.**

21. As a result of Mr. Seery’s roles as both Claimant Trustee and Trust Administrator of the Indemnity Subtrust, Mr. Seery is determined to hold the assets of the Claimant Trust “hostage” by creating an indemnity reserve and/or funding the

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<sup>3</sup> See [Exhibit 3](#).

Indemnity Subtrust to solely benefit the Indemnified Parties, including himself personally.

22. Mr. Seery's use of the Claimant Trust Asset's to build an indemnity "wall" for his own benefit rather than paying off the Class 8 and 9 claims, reflects an attempt to avoid "vesting" of equity Classes 10 and 11 under the CTA, of which HMIT is the largest interest holder. Such conduct is adverse to the interests of the Beneficiaries and the Contingent Beneficiaries of the Claimant Trust, including HMIT.

23. Mr. Seery's serving as both the Claimant Trustee and as the Trust Administrator of the Indemnity Subtrust therefore creates an irresolvable conflict of interest.

24. Seery has duties to the Claimant Trust Beneficiaries which include, without limitation: a) paying the remaining Class 8 and 9 claims in full, b) filing the GUC Certification, and c) vesting the Class 10 and 11 Equity Interests under the terms of the CTA. (CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.) In addition, Mr. Seery has the duty to do so timely and "not unduly prolong the duration of the Claimant Trust." (CTA at ¶¶ 2.2(b), 3.2(a), and 3.3(a).)

25. But, because Mr. Seery is a conditionally Indemnified Party, he self-servingly chooses essentially to use assets of the Claimant Trust to both fund a cash reserve to the Indemnity Subtrust, reportedly now totaling \$50 million, and on top

of that, create an additional “indemnity reserve” of some \$90 million in cash in the Claimant Trust. Meanwhile, Mr. Seery continues to collect substantial income in his capacity as Claimant Trustee rather than winding up the estate.

26. Simply put, Seery has chosen to dedicate assets of the Claimant Trust to erect an “indemnity wall” in front of himself instead of performing his remaining duties as the Claimant Trustee.

27. *De facto*, but for Mr. Seery’s deliberate failure to pay the remaining Class 8 and 9 claims in full with interest from the liquid assets in the Trust, the Class 10 and 11 Equity Holders are Claimant Trust Beneficiaries.

28. Notwithstanding that creditor constituencies voted to support, and the Bankruptcy Court approved, the Plan, understanding that there would be a partially independent, five-member Oversight Board supervising the monetization and distribution of estate assets, that contemplated governance structure has long since been ignored and has failed to safeguard the Claimant Trust. The representations in the Plan, the findings by the Bankruptcy Court, and the belief of the Fifth Circuit that Mr. Seery’s conduct as Claimant Trustee would be affirmatively overseen to assure that the Plan would be fully performed, are – at least as to the appropriate use of funds and indemnification -- all false.

**E. Mr. Seery’s Refusal to Administer the CTA Has Created Hostility between Mr. Seery and the Beneficiaries**

29. The Claimant Trust, of which Mr. Seery is Trustee, owns the limited partnership interests in the Reorganized Debtor.<sup>4</sup>

30. In the United States District Court for the Northern District of Texas, Highland Capital Management, L.P. (“HCMLP”), the Reorganized Debtor, filed a *Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, (Dist. Ct. Case No. 3:21-cv-00881-X, Dkt. No. 136) and filed a Memorandum of Law (*Id.* at Dkt. No. 137) in support thereof.

31. In the Memorandum of Law, the Reorganized Debtor (under the control of the Claimant Trust), defines “Dondero Entities” as including HMIT (Movant herein) in footnote 1, page 1. The Memorandum of Law declares that, “The Dondero Entities—all of which are dominated and controlled by or acting in concert with Dondero, HCMLP’s co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP’s confirmed Plan.” (*Id.*, p. 1.) The Memorandum further states, “Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP’s

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<sup>4</sup> *Memorandum Opinion* [Dkt. No. 3903], at page 11.

reorganization, commencing new (and frivolous) litigation against HCMLP and its management both insider and outside of Bankruptcy Court...” (*Id.* at p. 2.)

32. In particular, with respect to HMIT, the reorganized Debtor’s, Memorandum states, “[s]eparately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary duty and other obligations to HMIT—a prepetition equity holder.... However, HMIT’s putative complaint is emblematic of the Dondero Entities’ unceasing litigation--...” (*Id.* at ¶ 30, p. 26.) Ironically, the Memorandum was wrong: HMIT’s referenced motion sought leave to bring derivative claims *on behalf of HCMLP*.

33. Mr. Seery’s hostility to Dondero is also well documented in hearing testimony, depositions, and declarations Mr. Seery has provided since October of 2020.<sup>5</sup>

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<sup>5</sup> See Highland Capital Management, L.P.’s Memorandum of Law in Support of its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief, Case No. 21-00881 (N.D. Tex.), Dkt. 137 (wherein the Reorganized Debtor (under the control of the Claimant Trust), defines “Dondero Entities” as including HMIT (Movant herein) at fn. 1; states “The Dondero Entities—all of which are dominated and controlled by or acting in concert with Dondero, HCMLP’s co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP’s confirmed Plan.” *Id.*, at ¶ 1.; “Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP’s reorganization, commencing new (and frivolous) litigation against HCMLP and its management both insider and outside of Bankruptcy Court...” *Id.* at ¶ 4; “Separately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary duty and other obligations to HMIT—a prepetition equity holder.... However, HMIT’s putative complaint is emblematic of the Dondero Entities’ unceasing litigation--...” *Id.* at ¶ 30); Dec. 14, 2020 Depo. Tr. at 37:22-25 (“He has an interest in sticking his fingers in virtually everything but not providing any value. That’s pretty consistent.”); Aug. 4, 2021 Hr’g Tr. at 66:15-18 (“We wanted to make sure we had a clean, fast transaction. And based upon our dealings with the Dondero entities, we didn’t think we could possibly have that.”); June 2, 2023 Depo. Tr. at 113:17-20 (“... I don’t think this was a complicated case at all. I think this could have been easily resolved. And with normal commercial actors, it would have been.”).

34. Based on the above, there can be no question that Mr. Seery (a) is overtly hostile to Dondero, (b) contends that Dondero controls HMIT, and (c) is hostile to HMIT directly. Such hostility is well beyond mere discord.

## V. CAUSES OF ACTION

35. Pursuant to 12 *Del. C.* § 3327, an “officeholder,” including a trustee “may be removed in accordance with the terms of the governing instrument.” 12 *Del. C.* § 3327. Additionally, “the Court of Chancery may remove an officeholder on the Court’s own initiative or on petition of a trustor, another officeholder, or beneficiary” in any of five circumstances:

- 1) ***The officeholder has committed a breach of trust; or***
- 2) ***The continued service of the officeholder substantially impairs the administration of the trust; or***
- 3) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:
  - a) A substantial change in circumstances;
  - b) ***Unfitness, unwillingness or inability of the officeholder to administer the trust or perform its duties properly; or***
  - c) ***Hostility between the officeholder and beneficiaries or other officeholders that threatens the efficient administration of the trust.***

12 *Del. C.* § 3327 (emphasis added).

**Count I**  
**(Removal of Seery for Breach of the Duty of Trust)**

36. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

37. As Claimant Trustee, Mr. Seery owes duties to the Claimant Trust Beneficiaries to pay the remaining Class 8 and 9 claims in full and file the GUC Certification, thereby vesting the Class 10 and 11 Equity Interests under the terms of the CTA. (CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.) In addition, he has the duty to do so timely and “not unduly prolong the duration of the Claimant Trust.” (CTA at ¶¶ 2.2(b), 3.2(a), and 3.3(a).)

38. Mr. Seery also has a duty of loyalty and may not act in his own self-interest to the detriment of the Claimant Trust.

39. Mr. Seery has engaged in self-dealing and otherwise breached his duty of loyalty by refusing to pay the Class 8 and 9 Claims in full with interest and refusing to file the GUC Payment Certification in an effort to prevent Class 10 and 11 equity interests from “vesting” under the terms of the CTA, in order to create a “wall” of indemnity for his own benefit while continuing to collect professional fees.

40. Mr. Seery’s conduct constitutes a breach of the duty of loyalty and a breach of trust warranting Mr. Seery’s removal.

## **Count II**

### **(Removal of Mr. Seery for Impairment of the Administration of the Trust)**

41. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

42. The administration of the CTA requires payment to the remaining Class 8 and 9 creditors and the filing of the GUC Certification.

43. The Claimant Trust has more than sufficient funds to pay the remaining Class 8 and 9 creditors with interest. Nevertheless, Mr. Seery refuses to do so.

44. By refusing to pay the Class 8 and 9 creditors, thereby preventing the Class 10 and 11 equity interests from “vesting” under the terms of the CTA, despite the Claimant Trust having ample money to do so, Mr. Seery is substantially impairing the administration of the Trust, warranting his removal.

## **Count III**

### **(Removal of Mr. Seery for Unwillingness to Administer the Trust)**

45. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

46. The administration of the CTA requires payment to the remaining Class 8 and 9 creditors and the filing of the GUC Certification.

47. The Claimant Trust has more than sufficient funds to pay the remaining Class 8 and 9 creditors with interest. Nevertheless, Mr. Seery refuses to do so.

48. By refusing to pay the Class 8 and 9 creditors, thereby preventing the Class 10 and 11 equity interests from “vesting” under the terms of the CTA, despite the Claimant Trust having ample money to do so, Mr. Seery is necessarily unwilling to administer the trust, warranting his removal.

**Count IV**  
**(Removal of Mr. Seery because his Continued Services Substantially Impairs the Administration of the Trust)**

49. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

50. Mr. Seery’s dual roles as Claimant Trustee and Indemnity Subtrust Administrator creates an irreconcilable conflict of interest.

51. As Claimant Trustee, Mr. Seery has duties to the Claimant Trust Beneficiaries to timely pay the remaining Class 8 and 9 claims, file the GUC Certification, and “vest” the Class 10 and 11 Equity Interests under the terms of the CTA.

52. However, Mr. Seery, as an Indemnified Party and as Indemnity Subtrust Administrator, is instead using assets of the Claimant Trust to fund a \$50 million cash reserve to the Indemnity Subtrust and create an additional \$90 million “indemnity reserve.”

53. Mr. Seery's choice to pursue creation of an "indemnity wall" as Indemnity Subtrust Administrator rather than perform his duties as Claimant Trustee substantially impairs the administration of the trust, warranting his removal.

### **Count V**

#### **(Removal of Mr. Seery due to Hostility that Threatens Administration of the Trust)**

54. Plaintiff re-alleges and incorporates the allegations contained in the preceding paragraphs.

55. The hostility between Mr. Seery and the beneficiaries does not merely "threaten" the efficient administration of the Claimant Trust, it has in fact led to Mr. Seery refusing to administer the Claimant Trust at all, warranting Mr. Seery's removal.

### **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff HMIT respectfully requests that this Court:

(i) remove James P. Seery, Jr. as Claimant Trustee for the Highland Claimant Trust;

(ii) appoint a neutral and professional successor trustee that is not indemnified by the assets of the Claimant Trust;

(iii) award Plaintiff all costs and attorneys' fees against Defendant pursuant to 12 *Del. C.* § 3584; and

(iv) grant Plaintiff any and all other relief, at law or in equity, to which it is entitled.

Dated: January __, 2024	BAYARD, P.A.  _____ Stephen B. Braerman (#4952) 600 N. King St., Suite 400 Wilmington, Delaware 19801 (302) 655-5000  Attorneys for Plaintiff Hunter Mountain Investment Trust
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DRAFT

# EXHIBIT 1

002371

## CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and Wilmington Trust, National Association, a national banking association (“WTNA”), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

**DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

**ARTICLE I.**  
**DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.
- (b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.
- (c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.
- (d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.4(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.** **ESTABLISHMENT OF THE CLAIMANT TRUST**

### 2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

### 2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

### 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

#### 2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

**ARTICLE III.**  
**THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the “Authorized Acts”).

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee’s authority with respect to certain other assets, including certain portfolio company assets (the “Other Assets”).

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder’s Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the “Interim Trustee”) until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person’s appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee’s capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as “Estate Representative”. The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

**ARTICLE IV.**  
**THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors’ Committee (such disinterested members, the “Disinterested Members”). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors’ Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

#### 4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

#### 4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

## ARTICLE V. TRUST INTERESTS

### 5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

#### 5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

**ARTICLE VI.**  
**DISTRIBUTIONS**

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

## ARTICLE VII. TAX MATTERS

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## ARTICLE VIII. STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## ARTICLE IX. TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

## **ARTICLE X.** **AMENDMENTS AND WAIVER**

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o Highland Capital Management, L.P.  
100 Crescent Court, Suite 1850  
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association  
1100 North Market Street  
Wilmington, DE 19890  
Attn: Corporate Trust Administration/David Young  
Email: nmarlett@wilmingtontrust.com  
Phone: (302) 636-6728  
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however,* that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By:   
James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By:   
James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,  
as Delaware Trustee

By: NC Marlett III  
Name: Neumann Marlett  
Title: Bank Officer

# EXHIBIT 2



current balance sheet attached hereto as **Exhibit A** showing the general categories of assets and liabilities of the Highland Claimant Trust, subject to the accompanying notes.

*[Remainder of Page Intentionally Left Blank]*

Dated: July 6, 2023

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for the Reorganized Debtor and  
the Highland Claimant Trust*

**EXHIBIT A**

**Highland Claimant Trust**  
**Summarized Consolidated Balance Sheet <sup>(1)</sup>**  
**As of May 31, 2023**

The accompanying notes are integral to understanding this balance sheet  
 (Estimated and unaudited, \$ in millions)

	Balance per books	adjustments (see notes)	Adjusted balance
<b>Assets</b>			
Cash and equivalents	\$ 13	\$ -	\$ 13
Disputed claims reserve <sup>(2)</sup>	12	-	12
Other restricted cash	12	-	12
Investments <sup>(3)</sup>	118	(12) <sup>(6)</sup>	106
Notes receivable, net <sup>(4)</sup>	86	(83) <sup>(4)</sup>	3
Other assets	6	-	6
<b>Total assets</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
<b>Liabilities</b>			
Secured and other debt	\$ -	\$ -	\$ -
Distribution payable <sup>(2)</sup>	12	-	12
Additional indemnification reserves	-	90 <sup>(5)</sup>	90
Other liabilities	15	13 <sup>(5)</sup>	28
<b>Total liabilities <sup>(5)</sup></b>	<b>\$ 27</b>	<b>\$ 103</b>	<b>\$ 130</b>
<b>Book/adjusted book equity (see accompanying notes) <sup>(5)</sup></b>	<b>220</b>	<b>(198)</b>	<b>22</b>
<b>Total liabilities and book/adjusted book equity</b>	<b>\$ 247</b>	<b>\$ (95)</b>	<b>\$ 152</b>
 <b>Supplemental Info: <sup>(7)</sup></b>			
Sum of remaining allowed Class 8 Trust Beneficiaries, excluding interest	\$ 27		
Sum of remaining allowed Class 9 Trust Beneficiaries, excluding interest	99		
Sum of face amount of pending Class 8/9 potential Trust Beneficiaries, excluding interest	13		
Sub-total	\$ 139		

**{SEE ACCOMPANYING NOTES ON THE FOLLOWING PAGE}**

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

**Highland Claimant Trust  
Summarized Consolidated Balance Sheet <sup>(1)</sup>  
As of May 31, 2023**

**Notes:**

(1) This presentation is not in accordance with US GAAP and is unaudited, but has nevertheless been prepared in good faith and with the intention of providing the reader with a comprehensive understanding of the remaining assets and liabilities of the Highland Claimant Trust, Highland Capital Management, LP, HCMLP GP LLC, and Highland Litigation Trust (the "Consolidated Entities"). These entities have each been aggregated on a stand-alone basis, with intercompany amounts eliminated. Funds and entities that may otherwise be consolidated by one or more of the Consolidated Entities under US GAAP are not fully consolidated and rather are included solely at their equity value. For example, if Highland Capital Management, LP is a 20% investor in a managed fund with assets of \$100 million and liabilities of zero that would normally require consolidation under US GAAP, the presentation contained herein reflects an investment of \$20 million as opposed to fully consolidating the \$100 million fund and reflecting minority interest of \$80 million. The value of the Highland Indemnity Trust is not included herein. As of May 31, 2023, \$35 million has been funded to the Highland Indemnity Trust. Highland Indemnity Trust beneficiaries are Claimant Trust Indemnified Parties. Any unused assets remaining after satisfying indemnification obligations will be transferred to the Highland Claimant Trust or otherwise be distributed to the Claimant Trust Beneficiaries in accordance with the Indemnity Trust Agreement. For presentation purposes, it is assumed that outstanding indemnification obligations will consume the entirety of the Highland Indemnity Trust. Further, no current recovery amount has been ascribed to the "Kirschner Adversary" as all such value is considered to be contingent, nor have any liabilities been reserved for various success fees payable to professionals associated with the Kirschner Adversary or any other litigations. Such liabilities are also contingent in nature.

(2) Amounts already authorized for distribution, but reserved in the Disputed Claims Reserve related to resolution of pending disputed claims.

(3) Value reflected herein consists primarily of ownership in private funds and subsidiaries, valued using NAV as the practical expedient, public & private investments (including residual sale escrows), valued at fair value, and SE Multifamily Holdings, LLC, valued using book equity value as of the most recent financials received. See note 6 for further information. There is substantial risk and uncertainty with respect to the timing and ultimate cash value to be received from monetizations of these investments and such value could ultimately be materially impacted by actual monetizations.

(4) Book amounts reflect principal amounts outstanding on various notes, without discount, adjustment, or estimates of future costs of collection, with two exceptions. The first exception is to the note receivable from Hunter Mountain Investment Trust for which over \$90 million of principal and interest is currently due, payable, and in default. These notes are a component of the "Kirschner Adversary" which is currently stayed. These principal and interest amounts are fully reserved based on the assumption that Hunter Mountain Investment Trust has no other assets other than a contingent, unvested interest in the Highland Claimant Trust. That assumption is subject to change. The second exception relates to the note receivable from Highland Select Equity Master Fund, LP. This amount is fully reserved based on the pendency of the Ch. 7 proceeding for Highland Select Equity Master Fund, LP and the minimal remaining value of Highland Select Equity Master Fund, LP's assets, which is expected to be further consumed (at least in part) by trustee and professional fees. Aside from these exceptions, approximately \$65 million of these principal amounts (further described below) are subject to ongoing litigation with various note counterparties who are contesting the validity of their obligations. These disputed amounts are contained within the "Balance per books" column herein without discount or adjustment. While the makers have asserted defenses, Highland believes they are meritless and is confident that judgments will ultimately be entered in Highland's favor. However, based on Mr. Dondero's history of failing to satisfy judgments entered against his affiliates by others (e.g., UBS, the Redeemer Committee, Joshua Terry, and Patrick Daugherty), the effect of complete non-payment of principal is reflected in the "adjustments" column, which also assumes non-payment of the currently performing \$18 million note receivable from The Dugaboy Investment Trust. Ultimate recoveries from these notes could differ materially from the current principal outstanding depending on the outcome of the pending litigation and no recovery can be assured. Accrued interest is captured in the "Other assets" line item, subject to the exceptions discussed within this footnote. While there is currently a report & recommendation from the bankruptcy court for summary judgment, plus costs of collection, no costs of collection are reflected as assets on this balance sheet, so would be incremental. The estimated amount of such costs of collections are over \$3 million.

Detail of note principal amounts subject to report & recommendations of the bankruptcy court, currently pending in district court (excludes accrued interest):

Note Maker	Principal O/S	Comments
NexPoint Advisors, LP	\$ 25	Consists of a single note
NexPoint Real Estate Partners, LLC	12	fka HCRE Partners, LLC; five underlying notes comprise balance
NexPoint Asset Management, LP	11	fka Highland Capital Management Fund Advisors, LP; four underlying notes comprise balance
James Dondero	10	Three underlying notes comprise balance
Highland Capital Management Services, Inc.	7	Five underlying notes comprise balance
Sub-total	\$ 65	

(5) The book equity amount reflects a multitude of estimates including, but not limited to the value of investments and collectability of notes receivable. For book purposes, no contingent liabilities or indemnification reserves have been recorded as liabilities that would reduce book equity, notwithstanding that it is currently expected that there will be a) a need to maintain further highly material indemnification reserves; and b) further incurrence of springing contingent liabilities if distribution milestones are achieved. The amount of further incremental indemnification reserves are currently expected to exceed \$90 million, and may ultimately be greater, which will be required to be funded (at least in part) prior to any further material distributions to Trust Beneficiaries. In the absence of a global settlement that, among other things, fully and finally releases all Claimant Trust Indemnified Parties, Highland believes the additional indemnification reserves are required because, among other reasons, (a) based on the so-called "Dondero exclusion," insurance is likely to remain cost-prohibitive and/or unsatisfactory, leaving the Claimant Trust and Indemnity Trust assets as the sole sources of funding for indemnity obligations, (b) approximately twenty (20) matters are being actively litigated in at least 9 different forums; and (c) based on history, new litigation can be expected. Any unused assets remaining after satisfaction of indemnity obligations will be distributed as required by the Indemnity Trust Agreement. The amount of incremental springing contingent liabilities are expected to range from \$5 million to \$15 million, which are exclusive of various success fees associated with recoveries under the "Kirschner Adversary" and others. No reserves have been accrued for any current, pending, or threatened litigation brought by any Dondero-related parties. Lastly, it is expected that the trust and its subsidiaries will operate at an operating loss prospectively. The corresponding information in the "adjustments" column above is an estimate of the effects of these incremental indemnification reserves and contingent liabilities, but does not assume any expected future operating cash burn, which is expected to be significant.

(6) The value of SE Multifamily Holdings LLC maintained on this balance sheet is \$15.7 million, which is a component of the "Investments" line item and is based on a several years stale book-basis balance sheet. Notwithstanding Dondero-entities' previous disclosures of this interest at values of \$20 million and \$12 million, Highland also received interest from Dondero to acquire the interest for \$3.8 million, among other assets. The purpose of this adjustment is to assume that the holding could be monetized at the lower \$3.8 million level, which would result in a \$11.9 million decrease to Highland's book equity if it were hypothetically transacted at that level. Highland has initiated proceedings in Delaware to receive books and records relating to SE Multifamily Holdings LLC, for which it has the contractual right and has been seeking for approximately a year, but for which Dondero-controlled entities have not provided to date.

(7) Amounts described herein represent the face amounts of outstanding allowed and pending claims. The pending claim amounts do not include amounts that are the subject of various appeals or that are unliquidated. The allowed and pending claims (along with accrued interest) could ultimately be satisfied in part or in full using 1) the assets of the disputed claims reserve, 2) the residual amount of cash in the indemnity trust after satisfying all indemnification obligations, and 3) the residual amount of cash remaining after monetizing all other non-cash assets and paying liabilities and future expenses.

The information contained in this summarized consolidated balance sheet (the "Summary") is based on estimates, and therefore should not be relied upon, as actual results may differ materially from the estimates contained herein.

This Summary is neither an offer nor a solicitation of an offer to buy or sell securities.

Information contained herein is not indicative of, nor does it guarantee, future results. The information contained in this Summary is based on matters as they exist as of the date of preparation and not as of any future date. Valuations do not reflect performance in different economic or market cycles and there can be no assurances that valuations will be achieved. Trust Beneficiaries may experience materially different results and outcomes.

# EXHIBIT 3



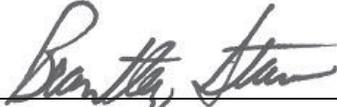
2. The Parties' entry into the Binding Bonding Agreement, a copy of which is attached hereto as **Exhibit A**, is hereby **APPROVED**.

3. The Parties are directed to comply with each and every term of the Binding Bonding Agreement.

4. The deposit of any amounts required by the Binding Bonding Agreement into the Court Registry will be done in each case in accordance with Miscellaneous Order No. 45, entered by the U.S. District Court of the Northern District of Texas on October 7, 1997 (the "Misc. Order"). For the avoidance of doubt, this Order shall constitute the Court's express order authorizing the deposit or transfer of funds into the Court Registry as required by the terms of the Misc. Order, and the Clerk of Court shall accept this Order as the requisite order of the Court permitting the deposit or transfer of funds into the Court Registry.

5. This Court shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order.

**IT IS SO ORDERED** this 3rd day of August, 2023.

  
\_\_\_\_\_  
THE HONORABLE BRANTLEY STARR  
UNITED STATES DISTRICT COURT JUDGE

# EXHIBIT A

### Binding Bonding Agreement

This Binding Bonding Agreement (“*Agreement*”) is entered into by and between Highland Capital Management, L.P. (“*Highland*”) and James Dondero, NexPoint Asset Management, L.P., NexPoint Advisors, L.P., NexPoint Real Estate Partners, LLC, and Highland Capital Management Services, Inc. (the “*Judgment Debtors*”) (along with Highland, collectively the “*Parties*”) with respect to judgments entered in US Dist. Court Case No. 3:21-cv-00881-X and its consolidated cause numbers (the “*Judgments*” in the “*District Court Case*”).

### RECITALS

WHEREAS, as of July 31, 2023, the Judgments entered in the District Court Case on July 6, 2023, total \$68,902,707.24 (“*Combined Judgment Amount*”), inclusive of principal, pre- and post-judgment interest, and awarded fees and expenses;

WHEREAS, Highland and the Judgment Debtors dispute the finality of certain of the Judgments;

WHEREAS, Highland may execute upon the Judgments thirty (30) days after the entry of a final Judgment, unless the United States District Court for the Northern District of Texas (the “*District Court*”) orders otherwise;

WHEREAS, the Judgment Debtors may stay execution of such Judgments by providing a supersedeas bond in conformance with the District Court’s rules (“*Bond*”) for each Judgment Debtor;

WHEREAS, the Parties seek to avoid the motion practice, expense, and harm caused by execution of the Judgments;

NOW THEREFORE, the Parties agree as follows:

### AGREEMENT

1. The Parties will request the District Court to enter separate judgments (“*Individual Judgment Amount*”) for each Judgment Debtor against each respective Judgment Debtor as follows (which the parties agree to consolidate for the purposes of appeal). Each Judgment Debtor shall Bond in the amount of 111% of its Individual Judgment Amount (“*Individual Bond Amount*”) as set forth below (the Individual Bond Amounts collectively the “*Combined Bond Amount*”):

Party	Individual Judgment Amount	Individual Bond Amount
NexPoint Asset Management, L.P.	\$3,628,692.37	\$4,027,848.53

NexPoint Asset Management, L.P.	\$8,441,524.65	\$9,370,092.36
NexPoint Advisors, L.P.	\$25,849,816.94	\$28,693,296.80
NexPoint Real Estate Partners, LLC	\$13,251,661.00	\$14,709,343.70
Highland Capital Management Services, Inc.	\$7,578,620.41	\$8,412,268.66
James Dondero	\$10,152,391.87	\$11,269,154.90
Total	\$68,902,707.24	\$76,482,004.95

2. The Judgment Debtors shall Bond the Combined Bond Amount according to the following schedule (“*Bonding Schedule*”):

Date <sup>1</sup>	Additional Bonded Amount	Combined Bonded Amount
August 11, 2023	\$30,000,000.00	\$30,000,000.00
August 18, 2023	\$10,000,000.00	\$40,000,000.00
August 25, 2023	\$10,000,000.00	\$50,000,000.00
September 8, 2023	\$10,000,000.00	\$60,000,000.00
October 11, 2023	\$16,482,004.95	\$76,482,004.95

3. In substitution for posting Bond, if, and only if, the registry of the District Court is willing to accept USD\$ cash in lieu of a Bond conforming with the rules of the District Court, a Judgment Debtor may post cash as security to an interest-bearing account (if the registry maintains such an account) with the Registry of the District Court (“*Cash Security*”). For all purposes under this Agreement, including calculation of the Combined Bonded Amount under the Bonding Schedule, a Judgment Debtor shall be credited as having posted a Bond equivalent to 111% of all amounts posted as Cash Security only if (a) the interest rate payable on such Cash Security by the registry of the District Court is equal to or greater than the 5.35% Federal Judgment Rate applicable to the Judgments (or, if less, the “Top-up Interest” is paid as described in footnote 2 below) and (b) all interest paid on the Cash Security becomes part of the Cash Security and remains in the Registry of the District Court and available to satisfy the Judgments. If the Registry of the District Court is not willing to accept a Cash Security or does not accrue and apply interest to the Cash Security as required by the immediately preceding sentence hereof, the Judgment Debtor must post the required amount in the form of a supersedeas Bond consistent with the Federal Rules of Civil Procedure and the Local Rules for the District Court. Consistent with the foregoing,

<sup>1</sup> For avoidance of doubt, failure to post the required Combined Bond Amount by the calendar dates set forth in the Bonding Schedule will constitute a default permitting the plaintiffs to immediately begin enforcement and collection proceedings for the unbonded amounts then outstanding against each and every Judgment Debtor, unless the parties otherwise agree and adjust the Bonding Schedule, or the District Court extends the stay of execution. If at least \$60 million in Bond (or the equivalent required amount in cash) has been posted on or before September 8, 2023, the parties will work in good faith to negotiate a fair and equitable schedule for completing Bonding if it cannot be completed by October 11, 2023; if Highland rejects the proposal of the remaining Judgment Debtors, Highland may begin collection efforts if Judgment Debtors have not obtained a stay of execution within 7 days of such rejection.

interest generated by any acceptable USD\$ cash deposit to the Registry of the District Court shall be treated as part of the Bond with respect to the right of collection after finalization of appeals.<sup>2</sup>

4. Upon posting of (a) Bond or (b) if acceptable to the Registry of the District Court, Cash Security in substitution of a Bond, the Judgment Debtors shall notify Highland in writing to counsel of record of the Judgment Debtor(s) on whose behalf such Bond or Cash Security was posted and the amount of Combined Bond Amount posted for the purposes of satisfaction of the Bonding Schedule. Except as set forth in footnote 1, failure to post the required Combined Bond Amount by the calendar date above shall constitute an event of default permitting Highland to immediately begin enforcement and collection proceedings for the unbonded amounts against each Judgment Debtor.
5. Each of the Judgment Debtors hereby represents and warrants on its own behalf that it has not since January 1, 2023, engaged in any Fraudulent Transfers. For the purposes of this Agreement, "Fraudulent Transfer" shall have its meaning as defined in 11 U.S.C. §§ 544, 548.
6. None of the Judgment Debtors shall transfer any of its assets with a value of over \$100,000 in one or a series of related transactions (an "*Asset Transfer*"), without providing five days (5) written notice to Highland (the "*Notice*") except that Notice is not required for (i) ordinary and customary payments to vendors, employees, contractors, or consultants, including for any bonuses that are already scheduled in the current compensation schedule, all consistent with recent past practice; (ii) payments made pursuant to the terms of a contract executed and effective prior to January 1, 2023 (payments under paragraph 6(i) and (ii) are referred to as "*Ordinary Course Payments*"), or (iii) transfers and transactions made for the purpose of bonding the Judgments. Notwithstanding the foregoing, other than with respect to Ordinary Course Payments being made pursuant to already existing written agreements, the Judgment Debtors *shall* provide Notice to Highland of all contemplated Asset Transfers between or among any Judgment Debtor, on the one hand, and any of Mr. Dondero or Scott Ellington or either of their immediate families or either of their affiliated entities (including Highgate Consulting Group, Inc., d/b/a Skyview Group ("*Skyview*")), on the other (any such contemplated Asset Transfer, an "*Insider Transaction*"). For the avoidance of doubt, items such as contractual payments to Skyview and its employees, scheduled bonus amounts, and medical reimbursements are not required to be disclosed to Highland so long as they otherwise constitute Ordinary Course Payments. While Notice of all other Insider Transactions is required, the Parties do not intend to restrict Asset

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<sup>2</sup> As set forth above, the interest rate for by the deposit of Cash Security must be equal to or greater than the 5.35% statutory post-judgment interest rate applicable to the Judgments. In the event that the Cash Security interest rate available at the Registry of the District Court is less than the statutory 5.35% post-judgment interest rate applicable to the Judgments, each the Judgment Debtor shall post additional Cash Security or post additional Bond in the amount of the dollar difference between the Cash Security interest rate payable at the Registry of the District Court (as applied to the Judgments) and the 5.35% post-judgment statutory interest rate applicable to the Judgments ("*Top-Up Interest*"). Top-Up Interest must be deposited with the Registry of the District Court and added to the Cash Security on the first business day of each month. Failure to timely deposit Top-Up Interest shall be an event of default hereunder permitting Highland to immediately begin enforcement and collection proceedings for the unbonded amounts against each Judgment Debtor.

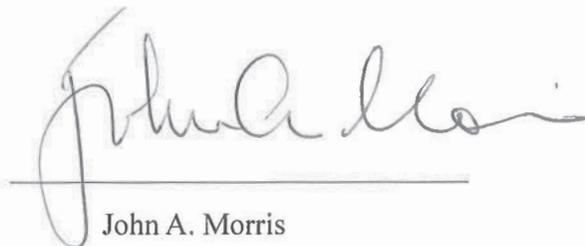
Transfers made as Ordinary Course Payments. The provisions of this Paragraph 6 shall expire (a) for each Judgment Debtor upon the posting of a Bond or Cash Security for its Individual Bond Amount or (b) upon the complete satisfaction of the Bonding Schedule. If Highland objects in writing to any Asset Transfer or Insider Transaction, the proposed transaction(s) may only be pursued if Highland has not moved on shortened notice and as expedited a basis as the District Court will accommodate for injunctive or other relief within 5 days of written notice of a Judgment Debtor's objection to Highland's objection (the Parties all hereby consent to having a motion under this provision heard on shortened notice or on an emergency basis), and such period has not been extended pursuant to a written agreement between the parties or by the Court upon good cause shown.

7. Prior to completion of the Bonding Schedule, and promptly following execution of this Agreement and entry of an order of the District Court approving this Agreement (and in any event on or before August 11, 2023), the Judgment Debtors shall grant (or cause to be granted) to Highland properly perfected, first-priority security interests (the "*Liens*") in collateral collectively up to the amount of \$76.4 million ("*Interim Collateral*"). To the extent the Liens are perfected through the filing of a UCC-1, the Liens will be recorded with UCC-1 filings in Dallas County, Texas, and in the state of incorporation/formation of the debtor listed in the applicable UCC-1. Each Lien shall be released with respect to each Judgment Debtor as each Judgment Debtor posts a Bond or Cash Security equal to its Individual Bond Amount in accordance with this Agreement as follows: upon approval by the District Court of any Bond or Cash Security equal to an Individual Bond Amount, Highland shall release its lien and security interest on Interim Collateral in the amount of such Bond or Cash Security with respect to the asset of the particular Judgment Debtor posting such Bond or Cash Security.
8. So long as the Judgment Debtors are in strict compliance with the Bonding Schedule (time being of the essence), and paragraphs 6 and 7 concerning Interim Collateral, Highland shall take no action to execute upon the Judgments.
9. Upon execution of this Agreement, the Parties agree that they shall immediately submit this Agreement to the District Court as a stipulation to be entered on the District Court Case docket and approved by the Court.

**AGREED BY COUNSEL TO THE PARTIES TO THIS AGREEMENT:**



Deborah Deitsch-Perez



John A. Morris

Counsel to the Judgement Debtors

Counsel to Highland



143-145 and 147, Defendants NexPoint Asset Management, L.P.; NexPoint Advisors, L.P.; and Highland Capital Management Services, Inc., tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: August 10, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez  
State Bar No. 24036072  
Michael P. Aigen  
State Bar No. 24012196  
STINSON LLP  
2200 Ross Avenue, Suite 2900  
Dallas, Texas 75201  
(214) 560-2201 telephone  
(214) 560-2203 facsimile  
Email: [deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)  
Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on August 10, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez

# Exhibit 1

### U.S. District Court

### Texas Northern - Dallas

THIS IS A COPY

#### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 2:56PM

Rcpt. No: 300007043

Trans. Date: Aug 8, 2023 2:56PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321cv000881 /01 FBO: Nexpoint Asset Management LP	1	6000000.00	6000000.00

CD	Tender	Amt
CH	Check #046304 08/8/2023	\$6,000,000.00
Total Due Prior to Payment:		\$6,000,000.00
Total Tendered:		\$6,000,000.00
Total Cash Received:		\$0.00
Cash Change Amount:		\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:18 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:19 PM  
**Correction Reason:** 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002430

### U.S. District Court

### Texas Northern - Dallas

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#### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 3:01PM

Rcpt. No: 300007048

Trans. Date: Aug 8, 2023 3:01PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 FBO: Nexpoint Advisors LP	1	18798654.37	18798654.37

CD	Tender			Amt
CH	Check	#046302	08/8/2023	\$18,798,654.37
Total Due Prior to Payment:				\$18,798,654.37
Total Tendered:				\$18,798,654.37
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

RECEIPT AMENDED by staff #1788 8/8/2023 3:12 PM  
AMENDMENT VERIFIED by staff #1774 8/8/2023 3:12 PM  
Correction Reason: 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002431

### U.S. District Court

### Texas Northern - Dallas

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#### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 2:59PM

Rcpt. No: 300007046

Trans. Date: Aug 8, 2023 2:59PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 FBO: Nexpoint Asset Management LP	1	6070217.02	6070217.02

CD	Tender			Amt
CH	Check	#046305	08/8/2023	\$6,070,217.02
Total Due Prior to Payment:				\$6,070,217.02
Total Tendered:				\$6,070,217.02
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:29 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:29 PM  
**Correction Reason:** 04) Incorrect Remitter

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002432

### U.S. District Court

### Texas Northern - Dallas

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#### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 3:07PM

Rcpt. No: 300007052

Trans. Date: Aug 8, 2023 3:07PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 FBO: Nexpoint Advisors LP	1	921379.59	921379.59

CD	Tender			Amt
CH	Check	#046303	08/8/2023	\$921,379.59
Total Due Prior to Payment:				\$921,379.59
Total Tendered:				\$921,379.59
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:31 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:31 PM  
**Correction Reason:** 07) Incorrect FBO 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002433

# U.S. District Court

## Texas Northern - Dallas

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### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 3:04PM

Rcpt. No: 300007050

Trans. Date: Aug 8, 2023 3:04PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321cv000881 /01 FBO: Nexpoint Advisors LP	1	6129782.98	6129782.98

CD	Tender			Amt
CH	Check	#046306	08/8/2023	\$6,129,782.98
Total Due Prior to Payment:				\$6,129,782.98
Total Tendered:				\$6,129,782.98
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:30 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:30 PM  
**Correction Reason:** 07) Incorrect FBO

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002434

# U.S. District Court

## Texas Northern - Dallas

THIS IS A COPY

### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 2:15PM

Rcpt. No: 300007029

Trans. Date: Aug 8, 2023 2:15PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DDTX321cv000881 /01 FBO: Highland Capital Management Services Inc	1	7578620.41	7578620.41

CD	Tender	Amt
CH	Check #046300	08/8/2023 \$7,578,620.41

Total Due Prior to Payment: \$7,578,620.41

Total Tendered: \$7,578,620.41

Total Cash Received: \$0.00

Cash Change Amount: \$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:21 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:22 PM  
**Correction Reason:** 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002435



146 and 148, Defendants NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC) and James Dondero tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: August 28, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

State Bar No. 24036072

Michael P. Aigen

State Bar No. 24012196

STINSON LLP

2200 Ross Avenue, Suite 2900

Dallas, Texas 75201

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

*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on August 28, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT 1

Generated: Aug 24, 2023 1:48PM

Page 1/1

**U.S. District Court**

**Texas Northern - Dallas**

Receipt Date: Aug 24, 2023 1:48PM

Rcpt. No: 300007302

Trans. Date: Aug 24, 2023 1:48PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC FBO: Nextpoint Real Estate Partners LLC	1	13251661.00	13251661.00

CD	Tender			Amt
CH	Check	#046362	08/24/2023	\$13,251,661.00
Total Due Prior to Payment:				\$13,251,661.00
Total Tendered:				\$13,251,661.00
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

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Page 1/1

## U.S. District Court

Texas Northern - Dallas

Receipt Date: Aug 24, 2023 1:51PM

Rcpt. No: 300007303

Trans. Date: Aug 24, 2023 1:51PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC FBO: James Dondero	1	1248339.00	1248339.00

CD	Tender	#	Date	Amt
CH	Check	#046361	08/24/2023	\$1,248,339.00
Total Due Prior to Payment:				\$1,248,339.00
Total Tendered:				\$1,248,339.00
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002440

Deborah Deitsch-Perez  
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 Facsimile: (214) 560-2203  
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 Email: [Michael.aigen@stinson.com](mailto:Michael.aigen@stinson.com)

*Counsel for Defendants*

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

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	<b>Case No. 19-34054-sgj11</b>
<b>Debtor.</b>	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civ. Act. No. 3:21-cv-00881-X</b>
	§	
<b>v.</b>	§	<b>(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)</b>
<b>HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.</b>	§	
	§	
<b>Defendants.</b>	§	

**NOTICE OF BONDING**

PLEASE TAKE NOTICE that, on October 4, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against the Judgment

Debtors [Dkts. 143-148], Defendants James Dondero, NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC), NexPoint Asset Management LP, NexPoint Advisors LP, and Highland Capital Management Services, Inc. tendered top-up interest payments to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: October 4, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez  
State Bar No. 24036072  
Michael P. Aigen  
State Bar No. 24012196  
STINSON LLP  
2200 Ross Avenue, Suite 2900  
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Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on October 4, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez

# EXHIBIT 1

**U.S. District Court**

**Texas Northern - Dallas**

Receipt Date: Oct 4, 2023 9:24AM

Rcpt. No: 300008032

Trans. Date: Oct 4, 2023 9:24AM

Cashier ID: #AC

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO FBO: James Dondero	1	435.76	435.76
701	Treasury Registry	DTXN321CV000881 Nextpoint Real Estate Partners FBO: Nextpoint Real Estate Partners	1	4625.75	4625.75
701	Treasury Registry	DTXN321CV000881 /003 NEXPOINT ASSET MGMT LP FBO: Nextpoint Asset Management	1	4213.34	4213.34
701	Treasury Registry	DTXN321CV000881 /002 NEXPOINT ADVISORS LP FBO: Nextpoint Advisors	1	9023.37	9023.37
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC FBO: Highland Capital Management	1	2645.46	2645.46

CD	Tender			Amt
CH	Check	#046437	10/3/2023	\$20,943.68
Total Due Prior to Payment:				\$20,943.68
Total Tendered:				\$20,943.68
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002444

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

*Counsel for Defendants*

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
<hr/>		
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civ. Act. No. 3:21-cv-00881-X</b>
	§	
<b>v.</b>	§	<b>(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.</b>	§	
	§	
<b>Defendants.</b>	§	

**NOTICE OF BONDING**

PLEASE TAKE NOTICE that, on October 12, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against James Dondero [Dkt.



148], Defendant James Dondero tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: October 12, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

State Bar No. 24036072

Michael P. Aigen

State Bar No. 24012196

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

*Counsel for Defendants*

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/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT 1

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Page 1/1

**U.S. District Court**

**Texas Northern - Dallas**

Receipt Date: Oct 12, 2023 4:16PM

James Dondero

Rcpt. No: 300008175

Trans. Date: Oct 12, 2023 4:16PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO FBO: James Dondero	1	8904052.87	8904052.87

CD	Tender			Amt
CH	Check	#046450	10/12/2023	\$8,904,052.87
Total Due Prior to Payment:				\$8,904,052.87
Total Tendered:				\$8,904,052.87
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002448

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

*Counsel for Defendants*

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

<b>In re:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civ. Act. No. 3:21-cv-00881-X</b>
	§	
<b>v.</b>	§	<b>(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.</b>	§	
	§	
<b>Defendants.</b>	§	

**NOTICE OF BONDING**

PLEASE TAKE NOTICE that, on November 1, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against the Judgment



Debtors [Dkts. 143-148], Defendants James Dondero, NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC), NexPoint Asset Management LP, NexPoint Advisors LP, and Highland Capital Management Services, Inc. tendered top-up interest payments to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: November 1, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

State Bar No. 24036072

Michael P. Aigen

State Bar No. 24012196

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

*Counsel for Defendants*

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/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT 1

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Page 1/1

## U.S. District Court

### Texas Northern - Dallas

Receipt Date: Nov 1, 2023 1:49PM

Rcpt. No: 300008516

Trans. Date: Nov 1, 2023 1:49PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO FBO: James Dondero	1	3798.75	3798.75
701	Treasury Registry	DTXN321CV000881 FBO: Nextpoint Real Estate Partners LLC	1	5275.40	5275.40
701	Treasury Registry	DTXN321CV000881 /003 NEXPOINT ASSET MGMT LP FBO: NexPoint Asset Management LP	1	4701.90	4701.90
701	Treasury Registry	DTXN321CV000881 /002 NEXPOINT ADVISORS LP	1	10069.64	10069.64
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC	1	2952.20	2952.20

CD	Tender	#	Date	Amt
CH	Check	#046504	11/1/2023	\$26,797.89
Total Due Prior to Payment:				\$26,797.89
Total Tendered:				\$26,797.89
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

002452

**STINSON LLP**

Deborah Deitsch-Perez

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*Counsel for Hunter Mountain Investment Trust*

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

---

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

---

**APPENDIX IN SUPPORT OF MOTION FOR LEAVE  
TO FILE A DELAWARE COMPLAINT**

Hunter Mountain Investment Trust files this Appendix in Support of its Motion for Leave to file a Delaware Complaint and requests the Court take judicial notice of the documents contained herein.

<b>Ex.</b>	<b>Date</b>	<b>Case</b>	<b>Dkt.</b>	<b>Document</b>	<b>Appendix Page(s)</b>
1	12/14/20	19-34054		Deposition Transcript of James Seery (excerpted)	App. 001-004
2	8/4/21	19-34054	2675	Hearing Transcript (excerpted)	App. 005-008
3	3/17/22			Article: Amazon closes deal to buy MGM movie studio	App. 009-012
4	5/12/22			Article: ScionHealth Announces Definitive Agreement to Acquire Cornerstone Healthcare Group	App. 013-017
5	8/10/22			Article: CCS Announces Company Expansion Focused on Accelerating Innovation in Home-Based Diabetes Care Management	App. 018-022
6	9/1/22			Article: Builders FirstSource Closes Acquisition of Trussway	App. 023-025
7	6/2/23	19-34054		Deposition Transcript of James Seery (excerpted)	App. 026-030
8	7/14/23	21-00881	137	Highland Capital Management, L.P.'s Memorandum of Law in Support of its Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief (excerpted)	App. 031-038
9	8/3/23	21-00881	149	Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals	App. 039-047
10	8/10/23	21-00881	151	Notice of Bonding	App. 048-057
11	8/28/23	21-00881	152	Notice of Bonding	App. 058-063
12	10/4/23	21-00881	160	Notice of Bonding	App. 064-068
13	10/12/23	21-00881	161	Notice of Bonding	App. 069-073
14	11/1/23	21-00881	162	Notice of Bonding	App. 074-078
15	11/22/23	23-03038	14	Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint	App. 079-109
16	12/21/23			Seery LinkedIn Profile	App. 110-112

Dated: January 1, 2024

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez  
State Bar No. 24036072  
Michael P. Aigen  
State Bar No. 24012196  
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Email: deborah.deitschperez@stinson.com  
Email: michael.aigen@stinson.com

*Counsel for Hunter Mountain Investment  
Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 1, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT 1

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JAMES SEERY - 12/14/2020

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

IN RE:	)	
	)	
	)	
	)	CHAPTER 11
HIGHLAND CAPITAL	)	
MANAGEMENT, L.P.,	)	CASE NO.
	)	19-34054-sgj11
Debtor.	)	
_____	)	

\*\*\* CONFIDENTIAL \*\*\*

REMOTE DEPOSITION OF  
JAMES SEERY

MONDAY, DECEMBER 14, 2020

REPORTED BY:  
KIM A. MCCANN, RMR, CRR, CSR  
JOB NO. 187724

JAMES SEERY - 12/14/2020

1 inquiry. I think that, depending on the asset,  
2 you could think of a myriad of ways to sell it.  
3 Some you'd go out and do a highly public  
4 marketing process. Some you would do much more  
5 quietly. It really depends on the business that  
6 it's in. It depends on the kinds of contracts  
7 it's in; depends on the customers it's in;  
8 depends on the fragility of the business or the  
9 strength of the business.  
10

11 Q. Well, you were aware of, were you  
12 not, that Mr. Dondero had an interest in  
13 purchasing SSP?

14 A. I was not aware Mr. Dondero had an  
15 interest in purchasing SSP.

16 Q. Were you told at any time that the  
17 SSP transaction would be something that  
18 Mr. Dondero would have an interest in?

19 A. That he would have an interest in the  
20 transaction? I'm sure he would have an interest  
21 in the transaction as evidenced by -- let me  
22 finish -- as evidenced by this litigation. He  
23 has an interest in sticking his fingers in  
24 virtually everything but not providing any value.  
25 That's pretty consistent.

1 JAMES SEERY - 12/14/2020

2 C E R T I F I C A T E

3 I, Kim A. McCann, RMR, CRR, CSR in and  
4 for the State of Texas, do hereby certify:

5 That JAMES SEERY, the witness whose  
6 deposition is hereinbefore set forth, was duly  
7 sworn by me and that such deposition is a true  
8 record of the testimony given by such witness;

9 That pursuant to FRCP Rule 30,  
10 signature of the witness was not requested by the  
11 witness or other party before the conclusion of  
12 the deposition;

13 I further certify that I am not related  
14 to any of the parties to this action by blood or  
15 marriage; and that I am in no way interested in  
16 the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto  
18 set my hand this December 14, 2020.

19

20

21



---

22

Kim A. McCann, RMR, CRR, CSR

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# EXHIBIT 2

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

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In Re: ) **Case No. 19-34054-sgj-11**  
          ) Chapter 11  
          )   
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) Wednesday, August 4, 2021  
                          ) 9:30 a.m. Docket  
Debtor. )  
                          ) - STATUS CONFERENCE RE:  
                          ) APPLICATION FOR  
                          ) ADMINISTRATIVE EXPENSES  
                          ) (1888)  
                          ) - MOTION FOR ORDER AUTHORIZING  
                          ) SALE OF CERTAIN PROPERTY  
                          ) (2535)  
                          ) - MOTION FOR ORDER AUTHORIZING  
                          ) SALE OF CERTAIN LIMITED  
                          ) PARTNERSHIP INTERESTS (2537)  
                          )

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

WEBEX APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz  
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10100 Santa Monica Blvd.,  
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Los Angeles, CA 90067-4003  
(310) 277-6910

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

For the NexBank  
Entities: Lauren K. Drawhorn  
WICK PHILLIPS  
3131 McKinney Avenue, Suite 100  
Dallas, TX 75204  
(214) 692-6200

Seery - Direct

66

1 reached a transaction agreement with Stonelake. We thought  
2 that that was in the best interests of the estate. We liked  
3 the terms. And then we subsequently got, again, an over-the-  
4 transom bid that it struck us as odd because we didn't show it  
5 to any Dondero entities. It was not shown out by brokers.  
6 And we did that specifically to avoid any litigation. So how  
7 it was -- we're still investigating, but how someone  
8 determined that we had sold it and showed up \$70,000 more,  
9 very odd numbers, we are -- we are looking at.

10 But we determined that with respect to the Maple Avenue  
11 property, we needed to get it closed, a quick sale, with a  
12 counterparty that we were confident would perform, and we do  
13 not want any litigation related to that sale or that property.  
14 It's not a giant piece of property. It's not a huge interest  
15 the Debtor has. Net, it will be around \$5 million. But we  
16 wanted to make sure that we had a clean, fast transaction.  
17 And based upon our dealings with the Dondero entities, we  
18 didn't think we could possibly have that.

19 In addition, as Mr. Pomerantz mentioned earlier, as I  
20 pointed out, this property has been owned by Highland for 15  
21 years. Up through the filing of the case and the imposition  
22 of the independent board, Mr. Dondero controlled it. There's  
23 nothing that goes on at the property other than Uchi pays the  
24 rent. It's triple net. There's nothing that anybody who'd  
25 operated and owned this property for 15 years, in my opinion,

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App. 007

1 pretty much gone with these contempt motions.

2 And, again, read my last paragraph. I can understand  
3 getting bored reading that thing, but please read the last  
4 paragraph to know that it's going to get worse if we have  
5 another one of these hearings and I do find contempt.

6 So, all right. Well, we will see you all I guess on the  
7 19th is my next -- I think that's where we have our next  
8 hearing.

9 (Proceedings concluded at 11:31 a.m.)

10 --oOo--

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CERTIFICATE

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

22 **/s/ Kathy Rehling**

**08/05/2021**

23

24 \_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

25

# EXHIBIT 3



MEDIA

# Amazon closes deal to buy MGM movie studio

PUBLISHED THU, MAR 17 2022-9:55 AM EDT UPDATED THU, MAR 17 2022-10:32 AM EDT



WATCH LIVE

## KEY POINTS

Amazon on Thursday said it had closed its \$8.5 billion deal to buy MGM, combining the fabled movie maker behind “Rocky” and “James Bond” with the online retailing giant.

Its decision to close comes after a deadline passed for the U.S. Federal Trade Commission to challenge the deal.

MGM bolsters Amazon Prime Video’s offering with more than 4,000 film titles.

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### In this article

AMZN +0.82 (+0.54%)



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Pavlo Gonchar | LightRocket | Getty Images

[Amazon](#) on Thursday said it had closed its \$8.5 billion deal to buy MGM, combining the fabled movie maker behind “Rocky” and “James Bond” with the online retailing giant as it looks to draw consumers through more streaming video.

In a statement, Amazon said it would welcome all MGM employees to the company and work with the studio’s leadership, indicating there would not be layoffs. Its decision to close comes after a deadline passed for the U.S. Federal Trade Commission to challenge the deal.

The Seattle-based retailer announced the transaction in May 2021, saying MGM offered a trove of content to draw consumers to its fast-shipping and streaming club Prime, which costs \$14.99 per month in the United States.

Nearly a year later, Amazon is clear of regulatory hurdles. The European Commission approved the deal Tuesday, with no conditions. Likewise, Amazon earlier informed the FTC that it had “substantially complied” with requests for information about the deal.

The FTC declined comment.

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year's Oscar-nominated [Leone's Pizza](#) and a long list of television shows that may help Amazon compete with streaming rivals [Netflix](#) and [Disney](#) +.

Hopkins praised MGM's "broad slate of original films and television shows."

"We welcome MGM employees, creators, and talent to Prime Video and Amazon Studios, and we look forward to working together to create even more opportunities to deliver quality storytelling," he said in a statement.

The FTC has a broader probe open into Amazon as part of government antitrust investigations begun under the Trump administration into the four big tech platforms, including Facebook and Google.

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In this article

**AMZN** +0.82 (+0.54%)

**TRENDING NOW**



Mark Cuban shares the No. 1 jargon word he hates most: 'You sound stupid ... trying to sound smart'



Couple has \$520,000 in debt—and wife had no idea: 'We've been living a life we shouldn't be living'



Former Trump lawyer Rudy Giuliani files for bankruptcy protection, lists more than \$100M in debts

PRO

These are the favorite stocks for 2024 from **UBS**

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# EXHIBIT 4

# ScionHealth Announces Definitive Agreement to Acquire Cornerstone Healthcare Group

NEWS PROVIDED BY  
**ScionHealth** →  
12 May, 2022, 15:00 ET



ScionHealth Logo (PRNewfoto/ScionHealth)



Cornerstone Healthcare Group Logo

*Combination strengthens ScionHealth's position as a leading healthcare delivery network committed to investing in community healthcare*

LOUISVILLE, Ky. and DALLAS, May 12, 2022 /PRNewswire/ -- ScionHealth and Cornerstone Healthcare Group ("Cornerstone") today announced that they have entered into a definitive agreement for ScionHealth to acquire Cornerstone. The combination of the two patient-focused and quality-driven organizations will strengthen ScionHealth's position as a leading healthcare delivery network, expanding services, resources, and expertise to grow and invest in the health and well-being of patients and employees in communities nationwide.



high-quality care and implement innovative solutions to improve the patient experience. The transaction expands ScionHealth's national network of long-term acute care hospitals, community-based hospitals and physician practices to deliver life-saving care solutions for the nation's most medically complex patients.

ScionHealth was **established in late 2021** with a focus on investment in community healthcare and grounded in commitments to outstanding patient care and quality outcomes. The acquisition of Cornerstone is the first step in executing ScionHealth's strategic plan for growth and innovation.

"When we launched ScionHealth, we knew our portfolio would serve as a strong platform for growth," said Rob Jay, chief executive officer of ScionHealth. "Adding Cornerstone to ScionHealth is a significant first milestone and reflects our commitment to deliver high-quality healthcare solutions in the communities we serve. We are excited to welcome Cornerstone's talented group of employees and providers into the ScionHealth family. Cornerstone shares our values, as well as a similar focus on advancing clinical and quality excellence to benefit patients, pursue innovative solutions, and make healthcare more accessible. Additionally, today's announcement reinforces ScionHealth's commitment to being an active member of the Louisville business community, as well as a strong employer in Louisville and the other communities where our team members live and work across the U.S."

"This combination with ScionHealth confirms Cornerstone's commitment to quality care," said Steve Jakubcanin, chief executive officer and president. "We are proud to join an organization that puts people first and shares our vision to deliver best-in-class healthcare innovation and clinical expertise. We look forward to the benefits this combination will have for our team members and those we serve."

Upon the completion of regulatory approvals and satisfaction of customary closing conditions, the acquisition of Cornerstone is expected to be completed in the second half of 2022. Cornerstone Specialty Hospitals Clear Lake and Cornerstone Specialty Hospitals Houston Medical Center are excluded from the acquisition.

ScionHealth strives to provide high-quality, patient-centered acute and post-acute hospital solutions. The health system is focused on driving innovation, serving its communities, and investing in people and technology to deliver compassionate patient care and excellent health outcomes. Based in Louisville, ScionHealth operates 79 hospital campuses in 25 states – 61 long-term acute care hospitals and 18 community hospital campuses and associated health systems. For more information, please visit [www.scionhealth.com](http://www.scionhealth.com).

**Media Contact:**

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Vice President, Communications and Marketing  
ScionHealth  
[Scott.Shepherd@scionhealth.com](mailto:Scott.Shepherd@scionhealth.com)

**About Cornerstone Healthcare Group**

Cornerstone Healthcare Group Holding, Inc. is a diversified healthcare company based in Dallas, Texas. Cornerstone's mission is to make a difference by providing exceptional care and delivering the best experience to all who they serve. For more information, visit [www.chghospitals.com](http://www.chghospitals.com).

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**Forward-Looking Statements**

This communication contains certain information, including statements as to the expected timing, completion and effects of the proposed transaction involving ScionHealth and Cornerstone Healthcare Group, which may constitute forward-looking statements. Such forward-looking statements are subject to risks and uncertainties, and actual results may differ materially. Such forward looking statements include, among others, statements about the benefits of the proposed transaction, including future financial and operating results, plans, objectives, expectations for ScionHealth and other statements that are not historical facts. See

Case 19-34054-sqi11 Doc 4001-4 Filed 01/01/24 Entered 01/01/24 19:44:55 Desc  
Case 3:24-cv-01531-X Document 4-1 Filed 01/01/24 Page 169 of 309 PageID 2720

statements are based on the current beliefs and expectations of management and are subject to significant risks and uncertainties outside of its control. These risks and uncertainties include, among others: the possibility that the anticipated benefits from the proposed transaction will not be realized, or will not be realized within the expected time periods; the occurrence of any event, change or other circumstances that could give rise to termination of the proposed transaction agreement or cause the proposed transaction not to close within the anticipated timeline or at all; risks associated with the disruption of management's attention from ongoing business operations due to the proposed transaction; risks associated with the retention of key employees; and the inability to obtain necessary regulatory approvals of the proposed transaction or the receipt of such approvals being subject to conditions that are not anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Except as otherwise required by law, neither ScionHealth nor Cornerstone Healthcare Group undertakes any obligation, and expressly disclaims any obligation, to update, alter or otherwise revise any forward-looking statements, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

SOURCE ScionHealth

# EXHIBIT 5

# CCS Announces Company Expansion Focused on Accelerating Innovation in Home-Based Diabetes Care Management



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NEWS PROVIDED BY

**CCS →**

10 Aug, 2022, 08:00 ET

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*A leader in home-delivered medical supplies for individuals living with chronic conditions, CCS is expanding its patient education, monitoring, and coaching services to unify the patient experience*

DALLAS, Aug. 10, 2022 /PRNewswire/ -- CCS, which now includes CCS Medical and CCS Health, has announced an expansion of its business. The company – a leading provider of home-delivered medical supplies for those living with diabetes or other chronic conditions – will be expanding the education, monitoring, and coaching services it offers to create a more collaborative approach to care. This new model incorporates the delivery of products with access to accredited clinicians supported by proprietary data and technology to simplify the patient experience. In addition, CCS has created a new strategic advisory board and added three new advisory board members to help redefine chronic care management at home.

Continue Reading



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App. 019

CCS supports more than 200,000 patients living with chronic conditions in the United States and delivers more than 1.2 million shipments of medical supplies to patients in their own homes. Through its Health and Medical units, CCS works with more than 400 employers and more than 1,800 managed care plans nationally to offer a more hands-on, educational approach to supporting their population of patients with diabetes. After over a quarter of a century delivering medical supplies and more than a decade providing chronic care management services for individuals living with diabetes, CCS has the experience, data, and patient and provider relationships in place to create a new era of patient-driven, proactive chronic care management.

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## **CCS is expanding its patient education, monitoring, and coaching services to unify the patient experience.**

✕ Post this

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CCS now has two main divisions. First, CCS Health couples high-touch, human engagement with technology to assist patients with education and coaching on disease management and product adoption. Second, CCS Medical offers the most advanced technology and trusted brand names in continuous glucose monitoring and insulin pump therapy, along with the other medical product and device needs of the patient.

With CCS as their partner, patients are more likely to get on therapy and stay on therapy, improving patient outcomes and reducing costs. For example, CCS tracked an average drop of 1.15 points in patient A1C values for a large national health plan as part of CCS's LivingLinked™ offering, which is a clinical education program. Also, CCS's diabetes clinical care management program, called LivingConnected®, with a large employer group yielded a cost reduction of 45% for those enrolled vs. not enrolled.

"The LivingConnected program through CCS has increased adherence to the diabetes standards of care, improving the health of our employees and their spouses with diabetes, while generating substantial savings for program participants," said Heather Hormel, Senior

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"The number of people being diagnosed with diabetes in the United States has been on the rise and is expected to continue to accelerate – and the pandemic has only made things worse," said Tony Vahedian, CEO of CCS. "It's clear how we have historically provided care to patients with diabetes needs to evolve. That's why we made the decision to accelerate updates to our own business model. These changes will enable our team to surround patients with the tools, resources, and support they need to manage their own care in a simpler way."

As part of the company's expansion, CCS kicked off a new Strategic Advisory Board to help integrate additional trusted clinical and technological leadership guidance as part of this business transition. The distinguished experts in their field who comprise the CCS Strategic Advisory Board include:

- **Francine Kaufman, MD** – Distinguished Professor Emerita of Pediatrics at the Keck School of Medicine of the University of Southern California and Children's Hospital Los Angeles. Francine is also a practicing endocrinologist, as well as the former president of the American Diabetes Association.
- **Christos M. Cotsakos, Ph.D.** – Founder, chairman, and CEO of Pennington Ventures, a digital transformation, financial, and strategic management firm. He is the former chairman and CEO of E\*TRADE and took the company public in 1996 as one of a handful of internet entrepreneurs and pioneers. He also served as global co-CEO of AC Nielsen and co-founded ArrowPath Venture Capital. Christos has held senior strategic roles at the intersection of healthcare and technology for more than 25 years.
- **Jean-Claude Saghbini** – Chief Technology Officer at Lumeris. With decades of technology leadership experience, he has held leadership positions at a wide array of healthcare companies, including Wolters Kluwer Health and Cardinal Health.

"Considering the majority of people with newly diagnosed diabetes do not receive adequate care management education and training in the first year, it's no surprise that the healthcare industry and employers continue to grapple with less than optimal adherence and outcomes with this population of patients," said Dr. Kaufman. "I'm excited to join the advisory board at ☞

Case 19-34054-sqj11 Doc 4001-5 Filed 01/01/24 Entered 01/01/24 19:44:55 Desc  
Case 3:24-cv-01531-X Document Exhibit 5-1 Page 5 of 25 Page 174 of 309 PageID 2725  
CCS – they understand that with the right supplies, personalized education, ongoing coaching, and home-based monitoring, people living with diabetes can achieve improved health outcomes."

To learn more about CCS and their integrated approach to redefining home-based chronic care management, visit [CCSMed.com](https://CCSMed.com).

## **About CCS**

CCS is a leading provider of clinical programs and home-delivered medical supplies for those living with chronic conditions, particularly diabetes. CCS supports 200,000+ patients living with chronic conditions in the United States and delivers more than 1.2 million shipments of medical supplies to patients in their own homes each year. The company works specifically with health plans and employers to offer both technology and hands-on educational services to holistically support patients living with diabetes. After serving patients for more than 25 years, CCS has the experience, data, and patient and provider relationships in place to create a new era of home-based, proactive chronic care management. Entities managed by Riva Ridge Capital LP are the primary shareholder of CCS. To learn more about CCS, please visit: [CCSMed.com](https://CCSMed.com); [LinkedIn](#); and [Twitter](#).

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KT McGraw

[ktmcgraw@ampcomms.org](mailto:ktmcgraw@ampcomms.org)

SOURCE CCS

# EXHIBIT 6



**Source:** Builders FirstSource, Inc.

September 01, 2022 16:01 ET

## **Builders FirstSource Closes Acquisition of Trussway**

***Strengthens Company's roof and floor truss value-added products, including a multifamily presence in key high-growth markets***

***Anticipated to generate robust free cash flow within first 15 months***

DALLAS, Sept. 01, 2022 (GLOBE NEWSWIRE) -- [Builders FirstSource, Inc.](#) (NYSE: BLDR) ("BFS" or the "Company"), the nation's largest supplier of structural building products and value-added components and services, today announced it has acquired Trussway, a leading provider of pre-fabricated roof and floor trusses as well as value-added building components and services, including for the multifamily sector, with annualized sales of approximately \$340 million.

"We are thrilled that Trussway will now be an integral part of Builders FirstSource. Since 1972, Trussway has been a supplier of choice to customers due to its ability to routinely deliver high quality products and services," said Dave Flitman, President and CEO of Builders FirstSource. "The addition of Trussway expands our footprint with our roof and floor truss offerings, including for multifamily customers, and enhances our value-added portfolio to better serve our customers and accelerate growth. We are excited to welcome the Trussway team, with its long-standing customer relationships and track record of profitable growth, into the Builders FirstSource family."

Headquartered in Houston, and with 1,000 employees nationwide, Trussway benefits from customer relationships across the ecosystem of owners, developers, general contractors and framers. Trussway serves more than 340 customer accounts in the U.S., and its average relationship with its top 25 customers is over 10 years. Trussway's innovative in-house estimating, design and engineering approach will be complementary to BFS, and the Company anticipates it will lead to synergies across its portfolio. As part of the acquisition, Builders FirstSource is adding Trussway's integrated network of six strategically located manufacturing facilities across the U.S.

"Trussway is honored to be a part of the BFS family," said Jeff Smith, President and CEO of Trussway. "For 50 years, Trussway associates have worked hard at building this company into a leading truss manufacturer. We look forward to bringing, and building on, our high intensity approach to safety, quality, service, production and customer satisfaction with the BFS Team."

The purchase of Trussway will be funded through cash on hand and the Company's ABL.

### **Advisors**

Rothschild & Co. served as financial advisor to Trussway and Latham & Watkins LLP served as its legal counsel. Alston & Bird LLP served as BFS's legal counsel.

## About Builders FirstSource

Headquartered in Dallas, Texas, Builders FirstSource is the largest U.S. supplier of building products, prefabricated components, and value-added services to the professional market segment for new residential construction and repair and remodeling. We provide customers an integrated homebuilding solution, offering manufacturing, supply, delivery and installation of a full range of structural and related building products. We operate in 42 states with approximately 560 locations and have a market presence in 47 of the top 50 and 85 of the top 100 MSA's, providing geographic diversity and balanced end market exposure. We service customers from strategically located distribution and manufacturing facilities (certain of which are co-located) that produce value-added products such as roof and floor trusses, wall panels, stairs, vinyl windows, custom millwork and pre-hung doors. Builders FirstSource also distributes dimensional lumber and lumber sheet goods, millwork, windows, interior and exterior doors, and other building products.

## Forward-Looking Statements

Statements in this news release and the schedules hereto that are not purely historical facts or that necessarily depend upon future events, including statements about forecasted financial performance or other statements about anticipations, beliefs, expectations, hopes, synergies, intentions or strategies for the future, may be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Readers are cautioned not to place undue reliance on forward-looking statements. In addition, oral statements made by our directors, officers and employees to the investor and analyst communities, media representatives and others, depending upon their nature, may also constitute forward-looking statements. As with the forward-looking statements included in this release, these forward-looking statements are by nature inherently uncertain, and actual results may differ materially as a result of many factors. All forward-looking statements are based upon information available to Builders FirstSource on the date this release was submitted. Builders FirstSource undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Any forward-looking statements involve risks and uncertainties that could cause actual events or results to differ materially from the events or results described in the forward-looking statements, including risks or uncertainties related to the continuing COVID-19 pandemic and its impact on the economy, the Company's acquisitions and continued ability to identify and consummate attractive acquisitions, the Company's growth strategies, including gaining market share and its digital strategies, or the Company's revenues and operating results being highly dependent on, among other things, the homebuilding industry, which in turn is dependent on economic conditions, lumber prices and the economy, including interest rates, inflation and labor and supply shortages. Builders FirstSource may not succeed in addressing these and other risks. Further information regarding factors that could affect our financial and other results can be found in the risk factors section of Builders FirstSource's most recent annual report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") and in the other reports Builders FirstSource files with the SEC. Consequently, all forward-looking statements in this release are qualified by the factors, risks and uncertainties contained therein.

## Investor Contact

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## Media Contact

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# EXHIBIT 7

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

IN RE: )  
 ) CHAPTER 11  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P. )  
 ) CASE NO. 19-34054-SGJ11  
Debtor. )

-----  
ORAL AND VIDEOTAPED DEPOSITION OF  
JAMES P. SEERY, JR.  
JUNE 2, 2023  
(Reported Remotely)  
-----

ORAL AND VIDEOTAPED DEPOSITION OF JAMES P. SEERY,  
JR., produced as a witness at the instance of the  
PETITIONER HUNTER MOUNTAIN INVESTMENT TRUST, and duly  
sworn, was taken in the above-styled and numbered cause  
on June 2, 2023, from 10:34 a.m. Eastern Time to  
3:08 p.m. Eastern Time, via videoconference, before  
Crystal Greer, CSR in and for the State of Texas,  
reported by machine shorthand, in New York, New York,  
pursuant to the Federal Rules of Civil Procedure.

1 complexity than -- than this business.

2                   What's -- what's -- what's unique about  
3 this business was the complete domination and control of  
4 one -- one individual who had litigated with the  
5 counterparties and became the creditors for north of ten  
6 years. That within each of the various entities, he had  
7 his own personal interconnected loans and loans from his  
8 entities and -- and different interests that have been  
9 moved around.

10                   And then subsequent to that, the complexity  
11 is really finding the -- the bankruptcy fraud where, you  
12 know, we realized that the legal department was not  
13 accurately named. That it was actually working in part  
14 of a conspiracy with Mr. Dondero to hide assets in the  
15 estate, including the Sentinel assets and the indemnity  
16 that were given to the -- to legal folks.

17                   So, yeah, I mean, I don't think this was a  
18 complicated case at all. I think this could have been  
19 easily resolved. And with normal commercial actors, it  
20 would have been.

21                   MR. MCENTIRE: Object as nonresponsive.

22                   Q. (By Mr. McEntire) Mr. Seery, other than the  
23 portfolio companies -- what's so funny about that?

24                   A. It was directly responsive to your question.  
25 But you can --

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

IN RE: )  
 ) CHAPTER 11  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P. )  
 ) CASE NO. 19-34054-SGJ11  
Debtor. )

REPORTER'S CERTIFICATION  
ORAL AND VIDEOTAPED DEPOSITION OF JAMES P. SEERY, JR.  
JUNE 2, 2023  
(Reported Remotely)

I, Crystal Greer, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, JAMES P. SEERY, JR., was duly  
sworn by the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
the witness;

I further certify that pursuant to FRCP Rule  
30(f)(1) that the signature of the deponent:

\_\_\_\_\_ was requested by the deponent or a party  
before the completion of the deposition and returned  
within 30 days from date of receipt of the transcript.  
If returned, the attached Changes and Signature page  
contains any changes and the reasons therefor;

X  was not requested by the deponent or a party

1 before the completion of the deposition.

2 I further certify that I am neither counsel for,  
3 related to, nor employed by any of the parties or  
4 attorneys in the action in which this proceeding was  
5 taken, and further that I am not financially or  
6 otherwise interested in the outcome of the action.

7 Subscribed and sworn to on this the 4th day of  
8 June, 2023.

9  
10 *Crystal Greer*

11  
12 CRYSTAL GREER, TEXAS CSR 8575  
13 Expiration Date: 11/30/2023  
14 Firm Registration No. 459  
15 Lexitas Legal  
16 325 North St. Paul Street  
17 Suite 1900  
18 Dallas, Texas 75201  
19 (214) 373-4977  
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21  
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# EXHIBIT 8



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**STATUTES**

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Highland Capital Management, L.P. (“HCMLP”), by and through its undersigned counsel, submits this *Memorandum of Law*<sup>1</sup> in support of its motion (the “Motion”) to deem the above-captioned defendants, their affiliated entities, and any person or entity controlled by or acting in concert with James Dondero (collectively, the “Dondero Entities”)<sup>2</sup> vexatious litigants and for related relief. In support of the Motion, HCMLP states as follows:

### **I. PRELIMINARY STATEMENT**<sup>3</sup>

1. The Dondero Entities—all of which are dominated and controlled by or acting in concert with Dondero, HCMLP’s co-founder and ousted Chief Executive Officer—are engaged in a coordinated litigation strategy spanning nearly three years to wear down HCMLP and its management and undermine HCMLP’s confirmed Plan. The Dondero Entities have clogged the dockets of this Court, the Bankruptcy Court, and the Fifth Circuit and have wasted untold judicial and estate resources. Accordingly, HCMLP asks this Court to (a) declare the Dondero Entities vexatious, (b) enjoin them from commencing or pursuing any claim or cause of action in this Court or the Bankruptcy Court against any “Covered Party” without this Court’s written permission, and (c) require that they file a copy of this Court’s order finding them vexatious in any pending or future litigation or proceeding.

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<sup>1</sup> HCMLP is concurrently filing its *Appendix in Support of Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief* (the “Appendix”). Citations to the Appendix are notated as “Ex. #, Appx. #.”

<sup>2</sup> “Dondero Entities” refers, collectively, to (a) Dondero, (b) NexPoint Advisors, L.P. (“NPA”), (c) Highland Capital Management Fund Advisors, L.P., n/k/a NexPoint Asset Management, L.P. (“HCMFA”), (d) HCRE Partners LLC n/k/a NexPoint Real Estate Partners LLC (“HCRE”), (e) Highland Capital Management Services, Inc., (f) Nancy Dondero, and (g) any entity directly or indirectly controlled by, or acting in concert with, Dondero, including, without limitation, (i) The Charitable DAF Fund, L.P. (“DAF”), (ii) CLO HoldCo, Ltd. (“CLOH”), (iii) The Dugaboy Investment Trust (“Dugaboy”), (iv) Get Good Investment Trust (“Get Good”), (v) Hunter Mountain Investment Trust (“HMIT”), (vi) NexPoint Strategic Opportunities Fund n/k/a NexPoint Diversified Real Estate (“NSOF”), (vii) Highland Income Fund, (viii) Highland Fixed Income Fund, (ix) Highland Global Allocation Fund, (x) NexPoint Capital, Inc., (xi) Strand Advisors, Inc., (xii) The Get Good Non-Exempt Trust 1, (xiii) The Get Good Non-Exempt Trust 2, and (xiv) PCMG Trading Partners XXIII, L.P. (“PCMG”).

<sup>3</sup> Capitalized terms in this Preliminary Statement have the meanings given to them below.

2. Dondero’s “strategy” is not new; he has used litigation as a weapon to harass and exact revenge against his perceived enemies for years. Prior to its 2019 bankruptcy, Dondero fostered a culture of scorched-earth, vindictive litigation at HCMLP, suing anyone who challenged him or refused to cave to his demands. That culture spawned litigation in courts and arbitration panels in Texas, Delaware, New York, and foreign jurisdictions like the Cayman Islands, Bermuda, and Guernsey lasting more than a decade.

3. But Dondero’s litigation “strategy” caught up with him. A series of adverse rulings forced HCMLP to file bankruptcy in October 2019. HCMLP’s unsecured creditors Committee was comprised largely of litigation claimants who were intimately familiar with Dondero’s tactics. The Committee immediately sought to remove Dondero from control of HCMLP. To avoid appointment of a chapter 11 trustee, HCMLP, Dondero, and the Committee entered into a settlement in January 2020, which removed Dondero and appointed an Independent Board to manage and oversee HCMLP’s bankruptcy.

4. In late 2020, after the Committee rejected Dondero’s settlement offers as inadequate—thus blocking Dondero’s efforts to regain control of HCMLP—he vowed to “burn down the place” unless they capitulated to his demands. Thereafter, directly and through the Dondero Entities, he began interfering with the management of the estate, threatening HCMLP employees, challenging nearly every action taken to further HCMLP’s reorganization, commencing new (and frivolous) litigation against HCMLP and its management both inside and outside of the Bankruptcy Court, violating Bankruptcy Court orders, filing multiple motions to recuse, and appealing nearly everything resulting in nearly 30 total appeals.<sup>4</sup>

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<sup>4</sup> With a few narrow exceptions, these appeals have been rejected and reviewing courts have sometimes been blunt in their characterization. For example, this Court expressed its belief that Dondero’s arguments were intended to “bamboozle” (*see* ¶ 27 *infra*), and the Fifth Circuit described the Dondero Entities’ collective objections to confirmation as “blunderbuss” (*see* ¶ 17 *infra*).

“TSSB”) during the Bankruptcy Case.<sup>114</sup> In May 2023, the TSSB, after “full consideration,” closed its investigation of HCMLP without finding any wrongdoing.<sup>115</sup>

**vii The Pending Actions Prove the Need for Additional Sanctions**

29. On February 6, 2023, certain of the Dondero Entities filed a motion for leave to file a complaint against HCMLP seeking information about HCMLP’s current assets, the results of its asset sales, and the amounts distributed to creditors.<sup>116</sup> While HCMLP objected to certain of the allegations, it acknowledged that—based on the relief sought—the Gatekeeper was not implicated. The Dondero Entities then filed their action as an adversary proceeding which will likely be dismissed as a matter of law.<sup>117</sup>

30. Separately, in March 2023, HMIT sought leave to sue HCMLP for allegedly breaching its fiduciary and other obligations to HMIT—a prepetition equity holder.<sup>118</sup> The Bankruptcy Court held an evidentiary hearing on June 8, 2023, and HCMLP believes HMIT’s motion for leave will be denied. However, HMIT’s putative complaint is emblematic of the Dondero Entities’ unceasing litigation—largely (a) restating the litany of false statements in their letters to the UST about alleged insider trading and (b) seeking to create standing so the Dondero Entities can re-litigate settled issues (*e.g.*, the HarbourVest settlement).

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<sup>114</sup> **Ex. 80, Appx. 2840.** HMIT cited the DAF’s TSSB complaint to support its allegation that its alleged claims against HCMLP regarding insider trading were “colorable” and should pass through the Gatekeeper. B.D.I. 3699 ¶ 37 (The TSSB “opened in investigation into the subject matter of the insider trades at issue” and the “continuing nature of this investigation underscores HMIT’s position that the claims described in [HMIT’s complaint] are plausible and certainly far more than ‘colorable.’”).

<sup>115</sup> **Ex. 78, Appx. 2295-2296** (The TSSB “has completed its review of the complaint ... against [HCMLP]. The issues raised in the complaint and information provided to our Agency were given full consideration, and a decision was made that no further regulatory action is warranted at this time.”)

<sup>116</sup> B.D.I. 3662; *see also* B.D.I. 3692, 3771, 3722.

<sup>117</sup> Adv. Proc. No. 23-03038-sgj (Bankr. N.D. Tex. May 10, 2023).

<sup>118</sup> B.D.I. 3699, 3760; *see also* B.D.I. 3780, 3783, 3815, 3816; **Ex. 80, Appx. 2537-2926.** A hearing on this motion was held on June 6, 2023, and it is *sub judice*.

# EXHIBIT 9



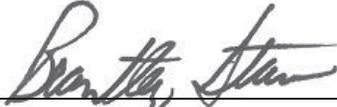
2. The Parties' entry into the Binding Bonding Agreement, a copy of which is attached hereto as **Exhibit A**, is hereby **APPROVED**.

3. The Parties are directed to comply with each and every term of the Binding Bonding Agreement.

4. The deposit of any amounts required by the Binding Bonding Agreement into the Court Registry will be done in each case in accordance with Miscellaneous Order No. 45, entered by the U.S. District Court of the Northern District of Texas on October 7, 1997 (the "Misc. Order"). For the avoidance of doubt, this Order shall constitute the Court's express order authorizing the deposit or transfer of funds into the Court Registry as required by the terms of the Misc. Order, and the Clerk of Court shall accept this Order as the requisite order of the Court permitting the deposit or transfer of funds into the Court Registry.

5. This Court shall have and retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order.

**IT IS SO ORDERED** this 3rd day of August, 2023.

  
\_\_\_\_\_  
THE HONORABLE BRANTLEY STARR  
UNITED STATES DISTRICT COURT JUDGE

# EXHIBIT A

**Binding Bonding Agreement**

This Binding Bonding Agreement (“*Agreement*”) is entered into by and between Highland Capital Management, L.P. (“*Highland*”) and James Dondero, NexPoint Asset Management, L.P., NexPoint Advisors, L.P., NexPoint Real Estate Partners, LLC, and Highland Capital Management Services, Inc. (the “*Judgment Debtors*”) (along with Highland, collectively the “*Parties*”) with respect to judgments entered in US Dist. Court Case No. 3:21-cv-00881-X and its consolidated cause numbers (the “*Judgments*” in the “*District Court Case*”).

RECITALS

WHEREAS, as of July 31, 2023, the Judgments entered in the District Court Case on July 6, 2023, total \$68,902,707.24 (“*Combined Judgment Amount*”), inclusive of principal, pre- and post-judgment interest, and awarded fees and expenses;

WHEREAS, Highland and the Judgment Debtors dispute the finality of certain of the Judgments;

WHEREAS, Highland may execute upon the Judgments thirty (30) days after the entry of a final Judgment, unless the United States District Court for the Northern District of Texas (the “*District Court*”) orders otherwise;

WHEREAS, the Judgment Debtors may stay execution of such Judgments by providing a supersedeas bond in conformance with the District Court’s rules (“*Bond*”) for each Judgment Debtor;

WHEREAS, the Parties seek to avoid the motion practice, expense, and harm caused by execution of the Judgments;

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. The Parties will request the District Court to enter separate judgments (“*Individual Judgment Amount*”) for each Judgment Debtor against each respective Judgment Debtor as follows (which the parties agree to consolidate for the purposes of appeal). Each Judgment Debtor shall Bond in the amount of 111% of its Individual Judgment Amount (“*Individual Bond Amount*”) as set forth below (the Individual Bond Amounts collectively the “*Combined Bond Amount*”):

Party	Individual Judgment Amount	Individual Bond Amount
NexPoint Asset Management, L.P.	\$3,628,692.37	\$4,027,848.53

NexPoint Asset Management, L.P.	\$8,441,524.65	\$9,370,092.36
NexPoint Advisors, L.P.	\$25,849,816.94	\$28,693,296.80
NexPoint Real Estate Partners, LLC	\$13,251,661.00	\$14,709,343.70
Highland Capital Management Services, Inc.	\$7,578,620.41	\$8,412,268.66
James Dondero	\$10,152,391.87	\$11,269,154.90
Total	\$68,902,707.24	\$76,482,004.95

2. The Judgment Debtors shall Bond the Combined Bond Amount according to the following schedule (“*Bonding Schedule*”):

Date <sup>1</sup>	Additional Bonded Amount	Combined Bonded Amount
August 11, 2023	\$30,000,000.00	\$30,000,000.00
August 18, 2023	\$10,000,000.00	\$40,000,000.00
August 25, 2023	\$10,000,000.00	\$50,000,000.00
September 8, 2023	\$10,000,000.00	\$60,000,000.00
October 11, 2023	\$16,482,004.95	\$76,482,004.95

3. In substitution for posting Bond, if, and only if, the registry of the District Court is willing to accept USD\$ cash in lieu of a Bond conforming with the rules of the District Court, a Judgment Debtor may post cash as security to an interest-bearing account (if the registry maintains such an account) with the Registry of the District Court (“*Cash Security*”). For all purposes under this Agreement, including calculation of the Combined Bonded Amount under the Bonding Schedule, a Judgment Debtor shall be credited as having posted a Bond equivalent to 111% of all amounts posted as Cash Security only if (a) the interest rate payable on such Cash Security by the registry of the District Court is equal to or greater than the 5.35% Federal Judgment Rate applicable to the Judgments (or, if less, the “*Top-up Interest*” is paid as described in footnote 2 below) and (b) all interest paid on the Cash Security becomes part of the Cash Security and remains in the Registry of the District Court and available to satisfy the Judgments. If the Registry of the District Court is not willing to accept a Cash Security or does not accrue and apply interest to the Cash Security as required by the immediately preceding sentence hereof, the Judgment Debtor must post the required amount in the form of a supersedeas Bond consistent with the Federal Rules of Civil Procedure and the Local Rules for the District Court. Consistent with the foregoing,

<sup>1</sup> For avoidance of doubt, failure to post the required Combined Bond Amount by the calendar dates set forth in the Bonding Schedule will constitute a default permitting the plaintiffs to immediately begin enforcement and collection proceedings for the unbonded amounts then outstanding against each and every Judgment Debtor, unless the parties otherwise agree and adjust the Bonding Schedule, or the District Court extends the stay of execution. If at least \$60 million in Bond (or the equivalent required amount in cash) has been posted on or before September 8, 2023, the parties will work in good faith to negotiate a fair and equitable schedule for completing Bonding if it cannot be completed by October 11, 2023; if Highland rejects the proposal of the remaining Judgment Debtors, Highland may begin collection efforts if Judgment Debtors have not obtained a stay of execution within 7 days of such rejection.

interest generated by any acceptable USD\$ cash deposit to the Registry of the District Court shall be treated as part of the Bond with respect to the right of collection after finalization of appeals.<sup>2</sup>

4. Upon posting of (a) Bond or (b) if acceptable to the Registry of the District Court, Cash Security in substitution of a Bond, the Judgment Debtors shall notify Highland in writing to counsel of record of the Judgment Debtor(s) on whose behalf such Bond or Cash Security was posted and the amount of Combined Bond Amount posted for the purposes of satisfaction of the Bonding Schedule. Except as set forth in footnote 1, failure to post the required Combined Bond Amount by the calendar date above shall constitute an event of default permitting Highland to immediately begin enforcement and collection proceedings for the unbonded amounts against each Judgment Debtor.
5. Each of the Judgment Debtors hereby represents and warrants on its own behalf that it has not since January 1, 2023, engaged in any Fraudulent Transfers. For the purposes of this Agreement, "Fraudulent Transfer" shall have its meaning as defined in 11 U.S.C. §§ 544, 548.
6. None of the Judgment Debtors shall transfer any of its assets with a value of over \$100,000 in one or a series of related transactions (an "*Asset Transfer*"), without providing five days (5) written notice to Highland (the "*Notice*") except that Notice is not required for (i) ordinary and customary payments to vendors, employees, contractors, or consultants, including for any bonuses that are already scheduled in the current compensation schedule, all consistent with recent past practice; (ii) payments made pursuant to the terms of a contract executed and effective prior to January 1, 2023 (payments under paragraph 6(i) and (ii) are referred to as "*Ordinary Course Payments*"), or (iii) transfers and transactions made for the purpose of bonding the Judgments. Notwithstanding the foregoing, other than with respect to Ordinary Course Payments being made pursuant to already existing written agreements, the Judgment Debtors *shall* provide Notice to Highland of all contemplated Asset Transfers between or among any Judgment Debtor, on the one hand, and any of Mr. Dondero or Scott Ellington or either of their immediate families or either of their affiliated entities (including Highgate Consulting Group, Inc., d/b/a Skyview Group ("*Skyview*")), on the other (any such contemplated Asset Transfer, an "*Insider Transaction*"). For the avoidance of doubt, items such as contractual payments to Skyview and its employees, scheduled bonus amounts, and medical reimbursements are not required to be disclosed to Highland so long as they otherwise constitute Ordinary Course Payments. While Notice of all other Insider Transactions is required, the Parties do not intend to restrict Asset

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<sup>2</sup> As set forth above, the interest rate for by the deposit of Cash Security must be equal to or greater than the 5.35% statutory post-judgment interest rate applicable to the Judgments. In the event that the Cash Security interest rate available at the Registry of the District Court is less than the statutory 5.35% post-judgment interest rate applicable to the Judgments, each the Judgment Debtor shall post additional Cash Security or post additional Bond in the amount of the dollar difference between the Cash Security interest rate payable at the Registry of the District Court (as applied to the Judgments) and the 5.35% post-judgment statutory interest rate applicable to the Judgments ("*Top-Up Interest*"). Top-Up Interest must be deposited with the Registry of the District Court and added to the Cash Security on the first business day of each month. Failure to timely deposit Top-Up Interest shall be an event of default hereunder permitting Highland to immediately begin enforcement and collection proceedings for the unbonded amounts against each Judgment Debtor.

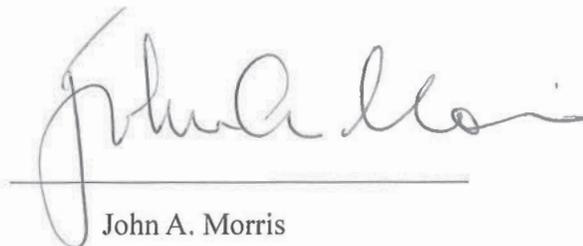
Transfers made as Ordinary Course Payments. The provisions of this Paragraph 6 shall expire (a) for each Judgment Debtor upon the posting of a Bond or Cash Security for its Individual Bond Amount or (b) upon the complete satisfaction of the Bonding Schedule. If Highland objects in writing to any Asset Transfer or Insider Transaction, the proposed transaction(s) may only be pursued if Highland has not moved on shortened notice and as expedited a basis as the District Court will accommodate for injunctive or other relief within 5 days of written notice of a Judgment Debtor's objection to Highland's objection (the Parties all hereby consent to having a motion under this provision heard on shortened notice or on an emergency basis), and such period has not been extended pursuant to a written agreement between the parties or by the Court upon good cause shown.

7. Prior to completion of the Bonding Schedule, and promptly following execution of this Agreement and entry of an order of the District Court approving this Agreement (and in any event on or before August 11, 2023), the Judgment Debtors shall grant (or cause to be granted) to Highland properly perfected, first-priority security interests (the "*Liens*") in collateral collectively up to the amount of \$76.4 million ("*Interim Collateral*"). To the extent the Liens are perfected through the filing of a UCC-1, the Liens will be recorded with UCC-1 filings in Dallas County, Texas, and in the state of incorporation/formation of the debtor listed in the applicable UCC-1. Each Lien shall be released with respect to each Judgment Debtor as each Judgment Debtor posts a Bond or Cash Security equal to its Individual Bond Amount in accordance with this Agreement as follows: upon approval by the District Court of any Bond or Cash Security equal to an Individual Bond Amount, Highland shall release its lien and security interest on Interim Collateral in the amount of such Bond or Cash Security with respect to the asset of the particular Judgment Debtor posting such Bond or Cash Security.
8. So long as the Judgment Debtors are in strict compliance with the Bonding Schedule (time being of the essence), and paragraphs 6 and 7 concerning Interim Collateral, Highland shall take no action to execute upon the Judgments.
9. Upon execution of this Agreement, the Parties agree that they shall immediately submit this Agreement to the District Court as a stipulation to be entered on the District Court Case docket and approved by the Court.

**AGREED BY COUNSEL TO THE PARTIES TO THIS AGREEMENT:**



Deborah Deitsch-Perez



John A. Morris

Counsel to the Judgement Debtors

Counsel to Highland

# EXHIBIT 10



143-145 and 147, Defendants NexPoint Asset Management, L.P.; NexPoint Advisors, L.P.; and Highland Capital Management Services, Inc., tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: August 10, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez  
State Bar No. 24036072  
Michael P. Aigen  
State Bar No. 24012196  
STINSON LLP  
2200 Ross Avenue, Suite 2900  
Dallas, Texas 75201  
(214) 560-2201 telephone  
(214) 560-2203 facsimile  
Email: [deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)  
Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on August 10, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez

# Exhibit 1

# U.S. District Court

## Texas Northern - Dallas

THIS IS A COPY

### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 2:56PM

Rcpt. No: 300007043

Trans. Date: Aug 8, 2023 2:56PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321cv000881 /01 FBO: Nexpoint Asset Management LP	1	6000000.00	6000000.00

CD	Tender	Amt
CH	Check #046304 08/8/2023	\$6,000,000.00
Total Due Prior to Payment:		\$6,000,000.00
Total Tendered:		\$6,000,000.00
Total Cash Received:		\$0.00
Cash Change Amount:		\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:18 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:19 PM  
**Correction Reason:** 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

# U.S. District Court

## Texas Northern - Dallas

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### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 3:01PM

Rcpt. No: 300007048

Trans. Date: Aug 8, 2023 3:01PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 FBO: Nexpoint Advisors LP	1	18798654.37	18798654.37

CD	Tender			Amt
CH	Check	#046302	08/8/2023	\$18,798,654.37
Total Due Prior to Payment:				\$18,798,654.37
Total Tendered:				\$18,798,654.37
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:12 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:12 PM  
**Correction Reason:** 03) Incorrect Case/Party Number

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### U.S. District Court

### Texas Northern - Dallas

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#### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 2:59PM

Rcpt. No: 300007046

Trans. Date: Aug 8, 2023 2:59PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 FBO: Nexpoint Asset Management LP	1	6070217.02	6070217.02

CD	Tender			Amt
CH	Check	#046305	08/8/2023	\$6,070,217.02
Total Due Prior to Payment:				\$6,070,217.02
Total Tendered:				\$6,070,217.02
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:29 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:29 PM  
**Correction Reason:** 04) Incorrect Remitter

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

# U.S. District Court

## Texas Northern - Dallas

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### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 3:07PM

Rcpt. No: 300007052

Trans. Date: Aug 8, 2023 3:07PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	Dtxn321cv000881 /01 FBO: Nexpoint Advisors LP	1	921379.59	921379.59

CD	Tender			Amt
CH	Check	#046303	08/8/2023	\$921,379.59
Total Due Prior to Payment:				\$921,379.59
Total Tendered:				\$921,379.59
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:31 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:31 PM  
**Correction Reason:** 07) Incorrect FBO 03) Incorrect Case/Party Number

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

### U.S. District Court

### Texas Northern - Dallas

THIS IS A COPY

#### AMENDED RECEIPT

Receipt Date: Aug 8, 2023 3:04PM

Rcpt. No: 300007050

Trans. Date: Aug 8, 2023 3:04PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321cv000881 /01 FBO: Nexpoint Advisors LP	1	6129782.98	6129782.98

CD	Tender			Amt
CH	Check	#046306	08/8/2023	\$6,129,782.98
Total Due Prior to Payment:				\$6,129,782.98
Total Tendered:				\$6,129,782.98
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:30 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:30 PM  
**Correction Reason:** 07) Incorrect FBO

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### Texas Northern - Dallas

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Rcpt. No: 300007029

Trans. Date: Aug 8, 2023 2:15PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DDTX321cv000881 /01 FBO: Highland Capital Management Services Inc	1	7578620.41	7578620.41

CD	Tender		Amt
CH	Check	#046300 08/8/2023	\$7,578,620.41
Total Due Prior to Payment:			\$7,578,620.41
Total Tendered:			\$7,578,620.41
Total Cash Received:			\$0.00
Cash Change Amount:			\$0.00

**RECEIPT AMENDED** by staff #1788 8/8/2023 3:21 PM  
**AMENDMENT VERIFIED** by staff #1774 8/8/2023 3:22 PM  
**Correction Reason:** 03) Incorrect Case/Party Number

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# EXHIBIT 11



146 and 148, Defendants NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC) and James Dondero tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: August 28, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez  
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Michael P. Aigen  
State Bar No. 24012196  
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*Counsel for Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on August 28, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez

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Receipt Date: Aug 24, 2023 1:48PM

Rcpt. No: 300007302

Trans. Date: Aug 24, 2023 1:48PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC FBO: Nextpoint Real Estate Partners LLC	1	13251661.00	13251661.00

CD	Tender			Amt
CH	Check	#046362	08/24/2023	\$13,251,661.00
Total Due Prior to Payment:				\$13,251,661.00
Total Tendered:				\$13,251,661.00
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

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**Texas Northern - Dallas**

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Rcpt. No: 300007303

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Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC FBO: James Dondero	1	1248339.00	1248339.00

CD	Tender			Amt
CH	Check	#046361	08/24/2023	\$1,248,339.00
Total Due Prior to Payment:				\$1,248,339.00
Total Tendered:				\$1,248,339.00
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

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# EXHIBIT 12

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*Counsel for Defendants*

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

<b>In re:</b>	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
<b>Debtor.</b>	§	<b>Case No. 19-34054-sgj11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
<b>Plaintiff,</b>	§	<b>Civ. Act. No. 3:21-cv-00881-X</b>
<b>v.</b>	§	<b>(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)</b>
<b>HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.</b>	§	
<b>Defendants.</b>	§	

**NOTICE OF BONDING**

PLEASE TAKE NOTICE that, on October 4, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against the Judgment

Debtors [Dkts. 143-148], Defendants James Dondero, NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC), NexPoint Asset Management LP, NexPoint Advisors LP, and Highland Capital Management Services, Inc. tendered top-up interest payments to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: October 4, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

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### **CERTIFICATE OF SERVICE**

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/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT 1

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**Texas Northern - Dallas**

Receipt Date: Oct 4, 2023 9:24AM

Rcpt. No: 300008032

Trans. Date: Oct 4, 2023 9:24AM

Cashier ID: #AC

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO FBO: James Dondero	1	435.76	435.76
701	Treasury Registry	DTXN321CV000881 Nextpoint Real Estate Partners FBO: Nextpoint Real Estate Partners	1	4625.75	4625.75
701	Treasury Registry	DTXN321CV000881 /003 NEXPOINT ASSET MGMT LP FBO: Nextpoint Asset Management	1	4213.34	4213.34
701	Treasury Registry	DTXN321CV000881 /002 NEXPOINT ADVISORS LP FBO: Nextpoint Advisors	1	9023.37	9023.37
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC FBO: Highland Capital Management	1	2645.46	2645.46

CD	Tender			Amt
CH	Check	#046437	10/3/2023	\$20,943.68
Total Due Prior to Payment:				\$20,943.68
Total Tendered:				\$20,943.68
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

# EXHIBIT 13

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*Counsel for Defendants*

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

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	<b>Case No. 19-34054-sgj11</b>
<b>Debtor.</b>	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civ. Act. No. 3:21-cv-00881-X</b>
	§	
<b>v.</b>	§	<b>(Consolidated with 3:21-cv-00880-X, 3:21-cv-01010-X, 3:21-cv-01378-X, 3:21-cv-01379-X)</b>
<b>HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.</b>	§	
	§	
<b>Defendants.</b>	§	

**NOTICE OF BONDING**

PLEASE TAKE NOTICE that, on October 12, 2023, in accordance with the terms of the Binding Bonding Agreement attached as Exhibit A to Order Granting Joint Agreed Emergency Motion for Order Approving Stipulation for the Bonding of Judgments and Stays of Executions Pending Appeals [Dkt 149], as well as the Amended Final Judgments against James Dondero [Dkt.

148], Defendant James Dondero tendered bond to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: October 12, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez  
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*Counsel for Defendants*

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/s/ Deborah Deitsch-Perez  
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**U.S. District Court**

**Texas Northern - Dallas**

Receipt Date: Oct 12, 2023 4:16PM

James Dondero

Rcpt. No: 300008175

Trans. Date: Oct 12, 2023 4:16PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO FBO: James Dondero	1	8904052.87	8904052.87

CD	Tender			Amt
CH	Check	#046450	10/12/2023	\$8,904,052.87
Total Due Prior to Payment:				\$8,904,052.87
Total Tendered:				\$8,904,052.87
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

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# EXHIBIT 14



Debtors [Dkts. 143-148], Defendants James Dondero, NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC), NexPoint Asset Management LP, NexPoint Advisors LP, and Highland Capital Management Services, Inc. tendered top-up interest payments to the Treasury Registry for the United States District Court for the Northern District of Texas. Proof of payment is attached hereto as Exhibit 1.

Dated: November 1, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

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The undersigned hereby certifies that, on November 1, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

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**U.S. District Court**

**Texas Northern - Dallas**

Receipt Date: Nov 1, 2023 1:49PM

Rcpt. No: 300008516

Trans. Date: Nov 1, 2023 1:49PM

Cashier ID: #OH

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
701	Treasury Registry	DTXN321CV000881 /005 JAMES DONDERO FBO: James Dondero	1	3798.75	3798.75
701	Treasury Registry	DTXN321CV000881 FBO: Nextpoint Real Estate Partners LLC	1	5275.40	5275.40
701	Treasury Registry	DTXN321CV000881 /003 NEXPOINT ASSET MGMT LP FBO: NexPoint Asset Management LP	1	4701.90	4701.90
701	Treasury Registry	DTXN321CV000881 /002 NEXPOINT ADVISORS LP	1	10069.64	10069.64
701	Treasury Registry	DTXN321CV000881 /001 HIGHLAND CAPITAL MGMT SERVICES INC	1	2952.20	2952.20

CD	Tender			Amt
CH	Check	#046504	11/1/2023	\$26,797.89
Total Due Prior to Payment:				\$26,797.89
Total Tendered:				\$26,797.89
Total Cash Received:				\$0.00
Cash Change Amount:				\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

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# EXHIBIT 15

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*Counsel for Highland Capital Management, L.P.  
 and the Highland Claimant Trust*

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj 11
Reorganized Debtor.	)	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	)	Adv. Pro. No. 23-03038-sgj
Plaintiffs,	)	
vs.	)	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	)	
Defendants.	)	

**MEMORANDUM OF LAW IN SUPPORT OF HIGHLAND CAPITAL  
 MANAGEMENT L.P. AND THE HIGHLAND CLAIMANT TRUST’S  
MOTION TO DISMISS COMPLAINT**

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification service address for the Reorganized Debtor is 100 Crescent Court, Suite 18



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Highland Capital Management, L.P. (“Highland” or the “Debtor,” as applicable), and the Highland Claimant Trust (the “Claimant Trust,” and together with Highland, the “Highland Parties”), the defendants in the above-captioned adversary proceeding, hereby submit this memorandum of law in support of their *Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interest in the Claimant Trust* (the “Motion”) seeking to dismiss the above-captioned action (the “Action”).

**I. PRELIMINARY STATEMENT<sup>2</sup>**

1. The Complaint should be dismissed in its entirety. Pursuant to Rule 12(b)(1), this Court lacks subject matter jurisdiction over the Action because the Claims are either moot or seek impermissible advisory opinions. Even if the Court had jurisdiction (and it does not), the Claims should be dismissed under Rule 12(b)(6) because they fail to state claims as a matter of law.

2. Under the express terms of the CTA and the Plan, holders of Contingent Trust Interests are not “Claimant Trust Beneficiaries” and have no rights, including information rights, unless and until their contingent, inchoate interests vest. Despite holding only unvested Contingent Trust Interests with no rights in the Claimant Trust, Plaintiffs stubbornly seek “financial information” regarding the Claimant Trust Assets and specifically request: (a) an accounting of the Claimant Trust Assets, (b) a determination as to the value of those assets compared to liabilities, and (c) a determination whether Plaintiffs’ Contingent Trust Interests “will vest.”

3. Count One, which seeks an accounting of the assets and liabilities of the Claimant Trust, has been rendered moot by the Pro Forma Adjusted Balance Sheet filed in July 2023 and other publicly-available information, which discloses the very information demanded. The relief

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<sup>2</sup> Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

sought in Count Three, namely, a determination as to whether Plaintiffs’ Contingent Trust Interests are “likely to vest,” is moot, seeks an impermissible advisory opinion, and is barred by collateral estoppel. In September 2023, four months after the Complaint was filed, this Court found that whether the Contingent Trust Interests might someday vest is dependent on a multitude of unknown and unknowable factors, for example, the amount of senior indemnification expenses that must be reserved for and ultimately paid by the Claimant Trust. Based, in part on those unknown senior expenses, this Court determined that the Contingent Trust Interests were “not in the money.” This Court lacks jurisdiction to render an opinion on Count Three and, to the extent that it could, it already has and Plaintiffs are collaterally estopped from re-litigating this issue. For the same reasons, there is no declaratory relief available to Plaintiffs that has not already been addressed in the Court’s prior ruling.

4. Even if the Court had subject matter jurisdiction over the Claims, the Complaint fails as a matter of law under Rule 12(b)(6). Plaintiffs’ equitable claim (Count One) is foreclosed by the plain and unambiguous terms of the CTA, the Plan, and this Court’s prior orders. Plaintiffs, as holders of Contingent Trust Interests, have no rights—including information rights—under the CTA. Under the circumstances, equity cannot abrogate the terms of that agreement or be used to create non-existent rights or extra-contractual duties, such as those relating to the disclosure of financial information or an accounting. This is especially so when Plaintiffs and their affiliates have unclean hands as vexatious adversaries to the entity against who they claim to seek equity.<sup>3</sup> Plaintiffs’ claims for declaratory relief (Counts Two and Three) also fail as a matter of law because

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<sup>3</sup> In addition to the numerous actions in which the Plaintiffs and their affiliates have attacked the Highland Parties or failed to honor their obligations to the Highland Parties, plaintiff HMIT is a defendant in an action on a note owed to Highland with current principal and interest owed in excess of \$98 million, discussed *infra*.

there is no cognizable underlying claim. For the reasons herein and discussed further below, the Complaint should be dismissed.

## II. RELEVANT BACKGROUND

### A. The Bankruptcy Case

5. On October 16, 2019 (the “Petition Date”), Highland filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Case”). As of the Petition Date, Highland had three classes of limited partnership interests (Class A, Class B, and Class C). *See* Disclosure Statement [Docket No. 1473], ¶ F(4). The Class A interests were held by The Dugaboy Investment Trust (“Dugaboy”),<sup>4</sup> Mark Okada’s family trusts, and Strand Advisors, Inc. The Class B and C interests were held by Hunter Mountain Investment Trust (“HMIT”). *Id.* On January 9, 2020, an independent board of directors, which included James P. Seery, Jr., was appointed to manage Highland’s Bankruptcy Case and estate. [Docket No. 339]. Mr. Seery was appointed Highland’s Chief Executive Officer and Chief Restructuring Officer in July 2020. [Docket No. 854].

### B. The Plan

6. On February 22, 2021, the Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the “Confirmation Order”), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1943-1] (the “Plan”). The Plan became effective on August 11, 2021 [Docket No. 2700] (the “Effective Date”). Pursuant to the Plan:

- General Unsecured Claims were classified as Class 8 and Subordinated Claims were classified as Class 9.

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<sup>4</sup> Dugaboy is James Dondero’s family trust.

- HMIT’s Class B Limited Partnership Interest and Class C Limited Partnership Interest were classified as Class 10.
- Class A Limited Partnership Interests, including Dugaboy’s, were classified as Class 11.
- The Claimant Trust, a Delaware statutory trust, was established pursuant to that certain *Claimant Trust Agreement*, effective as of August 11, 2021 (the “CTA”),<sup>5</sup> for the benefit of “Claimant Trust Beneficiaries;”<sup>6</sup>
- Holders of allowed general and subordinated unsecured Claims (*i.e.*, Class 8 and 9) received beneficial interests in the Claimant Trust (collectively, the “Trust Interests”) and became “Claimant Trust Beneficiaries;” and
- Holders of the Debtor’s prepetition partnership interests (*i.e.*, Class 10 and 11) were allocated unvested contingent interests (the “Contingent Trust Interests”) in the Claimant Trust that would vest if, and only if, the Claimant Trustee certifies that all Claimant Trust Beneficiaries (*i.e.*, Class 8 and 9) have been paid in full, Class 8 has received post-petition interest, and all disputed claims in Class 8 and 9 have been resolved.

(See generally Plan Art. III, IV.)

### C. Information Rights Under the CTA

7. By design, the clear terms of the CTA limit information rights. Section 3.12(a) of the CTA provides that the Claimant Trustee has no duty to provide an accounting of the Claimant Trust Assets to any party, including Claimant Trust Beneficiaries. CTA, § 3.12(a) (“Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting ....”).

8. Section 3.12(b) of the CTA provides limited information rights solely to “Claimant Trust Beneficiaries”:

The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-

<sup>5</sup> All capitalized terms used but not defined herein have the meanings given to them in the CTA.

<sup>6</sup> The CTA was expressly incorporated into and is a part of the Plan. Confirmation Order ¶ 25; Plan Art. IV, § J. The final form of the CTA was filed with the Court as Docket No. 1811-2 as modified by Docket No. 1875-4.

determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

CTA, § 3.12(b).

9. Nothing in the CTA or the Plan grants any other information rights, and, in fact, the CTA is clear that there are no information rights outside those in Section 3.12(b). *See* CTA, § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein)"). Thus, the only entities with information rights under the Plan are "Claimant Trust Beneficiaries," and those rights (a) are limited, (b) do not include rights to asset or subsidiary level information, and (c) can be further limited by the Claimant Trustee as appropriate to "maintain confidentiality."

10. Under the express terms of the Plan, the CTA, and this Court's prior orders, the "Claimant Trust Beneficiaries"<sup>7</sup> are the holders of Allowed Claims in Class 8 and Class 9. *See* CTA, § 1.1(h); Plan Art. I.B.27.<sup>8</sup> HMIT holds Class 10 interests and Dugaboy holds Class 11 interests, and therefore, neither Plaintiff is a "Claimant Trust Beneficiary." Instead, Plaintiffs hold

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<sup>7</sup> "Claimant Trust Beneficiaries" are defined as:

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

*See, e.g.*, CTA, § 1.1(h).

<sup>8</sup> *See also In re Highland Cap. Mgt., L.P.*, 19-34054-SGJ-11, 2023 WL 5523949, at \*35 (Bankr. N.D. Tex. Aug. 25, 2023), discussed further *infra*.

unvested “Contingent Trust Interests.” *See, e.g.*, Plan, Art. I.B.44; CTA, §§ 1.1(h), 5.1(c). Contingent Trust Interests “shall not have any rights under” the CTA, and holders of such interests will not “be deemed ‘Beneficiaries’” “unless and until” they vest in accordance with the Plan and CTA. *Id.* Specifically, under the CTA, Plaintiffs’ Contingent Trust Interests in the Claimant Trust will *not* vest and Plaintiffs will have *no* rights under the CTA unless and until (a) all Class 8 and Class 9 Claims are paid indefeasibly in full with interest, (b) all disputed claims are resolved, and (c) the Claimant Trustee certifies as much to this Court. *Id.* Class 8 and Class 9 Claims cannot be paid until indemnification claims are satisfied.<sup>9</sup> It is indisputable that Plaintiffs’ Contingent Trust Interests have not vested under the terms of the Plan and the CTA. *See Highland Cap.*, 2023 WL 5523949, at \*35. Plaintiffs are not “Claimant Trust Beneficiaries” and have no information rights.

**D. Dugaboy Files the Valuation Motion**

11. On June 30, 2022, Dugaboy filed its *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382] (the “Initial Valuation Motion”), seeking “a determination by this Court of the current value of the estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors.” Thereafter, on September 21, 2022, Dugaboy filed a supplemental motion [Docket No. 3533] (the “Supp. Valuation Motion” and, together with the Original Valuation Motion, the “Valuation Motion”). Therein, Dugaboy requested that the Court enter “an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets

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<sup>9</sup> *See, e.g.*, CTA Art. 6.1 (providing that distributions to Claimant Trust Beneficiaries are junior to the Claimant Trust’s expenses, including, among other things, amounts “necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses,” which include indemnification costs). This priority of payment under the Plan and CTA was upheld by the Fifth Circuit when affirming this Court’s order authorizing the creation of the indemnity sub-trust, the purpose of which was to reserve or retain any cash reasonably necessary to satisfy contingent liabilities. *See In the Matter of Highland Cap. Mgt., L.P.*, 57 F4th 494, 502 (5th Cir 2023).

currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now ....” The Valuation Motion was supported by HMIT. [Docket No. 3467]. Highland objected to the Valuation Motion. [Docket No. 3465].

12. On November 15, 2022, the Court held a status conference, during which the Court expressed concerns about whether the Valuation Motion should be filed as an adversary proceeding since it sought equitable relief. On December 7, 2022, after the parties submitted briefing on this issue, [see Docket Nos. 3637, 3638, 3639], the Court issued its order [Docket No. 3645] (the “Valuation Order”), in which it found that an adversary proceeding was necessary with regard to the relief sought in the Valuation Motion. The Court explained that “the essence of the Dugaboy Value Motions is a request for an accounting,” which constitutes “equitable relief that does not appear to be provided for in the confirmed chapter 11 plan.” *Id.* at 4. The Court further found that “Dugaboy and HMIT have not pointed to any provision of the CTA that establishes a right to an accounting,” and “[i]t would appear that Dugaboy and HMIT may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA.” Valuation Order at 5 (quoting CTA §§ 3.12(a), (b)).

**E. Plaintiffs File the Complaint**

13. On May 10, 2023, Plaintiffs commenced this Action against Highland and the Claimant Trust by filing their complaint [Adv. Pro. No. 23-03038, Docket No. 1] (the “Complaint”). In their Complaint, Plaintiffs seek an equitable accounting of the Claimant Trust Assets so they can determine if their Contingent Claimant Trust Interests “are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”

14. In their first count (“Count One”), Plaintiffs request an accounting “regarding the Claimant Trust Assets, including the amount of cash and the remaining non-cash assets, and details

of all transactions that have occurred since the wall of silence was erected, and all liabilities.” Plaintiffs maintain, *inter alia*, that “[d]ue to the lack of transparency into the assets of the Claimant Trust, Plaintiffs are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.” Compl. ¶¶ 82-88.<sup>10</sup>

15. In their second count (“Count Two”), Plaintiffs seek a declaratory judgment regarding the value of the Claimant Trust Assets. Plaintiffs specifically maintain that “[o]nce Defendants are compelled to provide information about the Claimant Trust Assets, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations.” Compl. ¶ 90.

16. In their third count (“Count Three,” and collectively with Count One and Count Two, the “Claims”), Plaintiffs seek a declaration and determination that “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid ... the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.” Compl. ¶ 94.

#### **F. The Court Denies HMIT Leave to File Adversary Proceeding**

17. Around the same time, HMIT separately filed its *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699], which was later supplemented and

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<sup>10</sup> Plaintiffs allege that Highland “failed and refused to file quarterly 2015.3 reports, leaving stakeholders, including Plaintiffs, in the dark about the value of the estate and the mix of assets it held, bought or sold.” Compl. ¶ 41. Plaintiffs’ allegations about the lack of transparency in the Bankruptcy Case is tired and purposefully misleading. ***Highland has complied with every single pre- and post-Effective Date disclosure obligation***—except for the Rule 2015.3 disclosure. The Fifth Circuit has denied Dugaboy’s appeal of the denial of its post-confirmation motion to compel compliance with Rule 2015.3, (*see* Case No. 22-10831, Document No. 46), and this Court has found that “it is not as though the Claimant Trustee is operating ‘under the radar’” (Valuation Order at 5). Moreover, as previously disclosed in this Court, the failure to file the 2015.3 reports during the case was a direct result of actions of persons who work for Plaintiffs and their affiliates, and in any event, at all time Plaintiffs’ control person had full access to the information they cry about. Nevertheless, Plaintiffs continue with their baseless allegations about the lack of transparency in this case.

modified [Docket Nos. 3760, 3815, and 3816] (collectively, the “Motion for Leave”).<sup>11</sup> In the Motion for Leave, HMIT sought leave to sue Highland, Mr. Seery, Stonehill, and Farallon<sup>12</sup> falsely alleging both direct and derivative claims for “insider trading” and breach of fiduciary duty (the “Proposed Claims”).

18. On August 25, 2023, this Court issued its order denying the Motion for Leave on multiple grounds. *See Highland Cap.*, 2023 WL 5523949 (the “Order Denying Leave”). In the Order Denying Leave, the Court found that, *inter alia*: (a) HMIT was not a “Claimant Trust Beneficiary” and not a “beneficial owner” of the Claimant Trust; (b) HMIT should not be treated as a “Claimant Trust Beneficiary” after “considering the current value of the Claimant Trust Assets ...”; (c) HMIT held “only an *unvested* contingent interest in the Claimant Trust,” and “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple;” and (d) the Court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested ....” *Id.* at 35.

**G. Highland Files the Pro Forma Adjusted Balance Sheet Ahead of Mediation in July 2023**

19. On April 20, 2023, James Dondero and certain of his controlled affiliates (collectively, the “Dondero Parties”) filed their *Motion to Stay and to Compel Mediation* [Docket No. 3752] (the “Mediation Motion”), which was granted, in part, on August 2, 2023, [Docket No. 3897].<sup>13</sup> On July 6, 2023, in furtherance of mediation and in compliance with an agreed-upon Court order [Docket 3870], Highland filed a *pro forma* adjusted balance sheet [Docket No. 3872] (the “Pro Forma Adjusted Balance Sheet”). The Pro Forma Adjusted Balance Sheet disclosed a

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<sup>11</sup> Each version of the Motion for Leave attached a proposed complaint [Docket Nos. 3699-1, 3760-1, 3815-1, 3816-1] (the last version, the “Proposed Complaint”).

<sup>12</sup> Stonehill and Farallon refer to, respectively, Stonehill Capital Management, LLC and Farallon Capital Management, LLC.

<sup>13</sup> The mediation did not result in a settlement. *See* Docket No. 3964.

point-in-time \$152 million in assets (of which only \$37 million was cash or restricted cash) and \$130 million in liabilities for a total equity value of \$22 million, which, even assuming the equity value could be distributed (and it cannot be), is well short of the \$126 million needed to pay Allowed Class 8 and Class 9 claims (exclusive of interest).

20. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been disclosed in the Bankruptcy Case as of April 2023, [*see* Bankr. Docket Nos. 3756 and 3757] (the “Post-Confirmation Reports”), and through these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer. These enhanced Post-Confirmation Reports were publicly filed to provide interested parties substantially more information than was required. *See, e.g.*, Docket No. 3757 at 13-15 (Addendum showing (i) “Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary;” (ii) liabilities, including remaining disputed/expunged or pending claims, (iii) disbursements to Classes 8 and 9, and (iv) “Remaining investments, notes, and other assets”).

**H. HMIT Seeks Reconsideration of Order Denying Leave Based on the Pro Forma Adjusted Balance Sheet**

21. On September 8, 2023, HMIT filed its motion for reconsideration of the Order Denying Leave [Docket No. 3905] (the “Motion to Reconsider”), falsely and misleadingly contending that the Pro Forma Adjusted Balance Sheet (a) provided an accounting of the Claimant Trust Assets and (b) proved that (i) the value of the Claimant Trust Assets exceeded liabilities and (ii) HMIT was “in the money” and (c) its interests were likely to vest and that HMIT therefore had standing as a “Claimant Trust Beneficiary.” On October 6, 2023, the Court denied the Motion to Reconsider [Docket No. 3936] (the “Order Denying Reconsideration”). The Court found that, in pertinent part, the Balance Sheet did not “demonstrate that HMIT’s contingent interest is ‘in the

money,” noting that “HMIT does not give proper attention to the voluminous supplemental notes” in the Balance Sheet that are “integral to understanding the numbers therein.” *Id.* at 3 (citing Notes 5 and 6 of the Balance Sheet which show that Highland will operate at an “operating loss prospectively,” and that the administrative expenses and legal fees continue to deplete assets, among other things). The Court also found that the Balance Sheet did not constitute “newly discovered evidence” because it did not contain information that was materially different from the information disclosed on the Post-Confirmation Reports, filed three months earlier. *Id.* at 2-3.

### III. ARGUMENT

#### A. The Court Does Not Have Subject Matter Jurisdiction Over Counts One and Three

22. The Court does not have subject matter jurisdiction to adjudicate Counts One and Three. Counts One and Three are moot, and Count Three impermissibly seeks an advisory opinion.

##### 1. Legal Standard

23. A motion under Rule 12(b)(1) must be considered before any motion on the merits because subject matter jurisdiction is required to determine the validity of any claim. *See Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994). “Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam). “The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.” *Id.* “A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (internal quotations omitted).

2. Counts One and Three are Moot

i. Count One is Moot in Light of the Pro Forma Adjusted Balance Sheet

24. Count One is moot in light of the Pro Forma Adjusted Balance Sheet and must be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). For a court to have subject matter jurisdiction over a suit, a “controversy must remain live throughout the suit’s existence.” *Bazzrea v. Mayorkas*, 3:22-CV-265, 2023 WL 3958912, at \*3 (S.D. Tex. June 12, 2023). “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversary’ for purpose of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (internal quotations omitted).

25. Here, the issue presented in Count One is no longer “live.” In Count One, Plaintiffs seek (a) “information regarding the Claimant Trust assets,” including the amount of assets and liabilities, so that (b) Plaintiffs can “determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.” Compl. ¶¶ 82-88. As discussed *supra*, the Pro Forma Adjusted Balance Sheet provides this very information. It shows the value of the Claimant Trust Assets, the Claimant Trust’s liabilities, and the potential equity value available for Claimant Trust Beneficiaries (assuming all Claimant Trust Assets are liquidated at current valuations and liabilities are fixed). HMIT admitted as much in its Motion to Reconsider when it specifically (but incorrectly) maintained that, based on the assets and liabilities shown on the Pro Forma Adjusted Balance Sheet, “[HMIT’s] Contingent Claimant Trust Interest will vest, or put colloquially, [HMIT] is ‘in the money.’” Motion to Reconsider ¶¶ 5-8 (emphasis added).<sup>14</sup> The Post-

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<sup>14</sup> Although Plaintiffs have effectively admitted the Pro Forma Adjusted Balance Sheet moots their requested relief, as this Court is aware, the current value of the Claimant Trust Assets does not dictate when or if Plaintiffs’ Contingent Trust Interests will ever vest. Whether and when Contingent Trust Interests may someday vest depends upon the satisfaction of the conditions set forth in the CTA and the Plan, and this Court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested ...” regardless of whether the value of the pro forma assets exceeds the pro forma value of the liabilities on a particular date. Order Denying Leave at \*35.

Confirmation Reports, filed prior to the Complaint in filed in April 2023, similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets.

26. The Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports have thus eliminated the “actual controversy” at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided. Count One is therefore moot. *See Bazzrea*, 2023 WL 3958912, at \*4 (finding plaintiffs’ claims moot where events that occurred after the complaint was filed “eliminated the actual controversy—the court cannot provide effectual relief and thus the plaintiffs’ claims are moot.”) Accordingly, Plaintiffs have not met their burden to establish that the Court has subject matter jurisdiction over Count One, and it should be dismissed under Rule 12(b)(1).

ii. **Count Three is Moot Because the Court has Already Held that Contingent Claimant Interests are Not “In the Money”**

27. Count Three, seeking a declaration regarding whether Plaintiffs’ Contingent Trust Interests “are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries,” Compl. ¶ 94, is moot because the Court already decided this issue. As discussed above, in its Motion to Reconsider, HMIT incorrectly argued that the Pro Forma Adjusted Balance Sheet showed that HMIT’s Contingent Trust Interests were “in the money” and likely to vest, rendering HMIT a “Claimant Trust Beneficiary.” In its Order Denying Reconsideration, the Court found that Contingent Trust Interests are not “in the money,”<sup>15</sup> and that HMIT is, therefore, not a Claimant Trust Beneficiary. As the Court explained, Plaintiffs’ reliance on the assets and liabilities disclosed on the Pro Forma Adjusted Balance Sheet in support of its argument that its interests

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<sup>15</sup> Although the Court’s finding related to HMIT’s Contingent Trust Interest, this ruling applies equally to Dugaboy, because both Plaintiffs both hold Contingent Trust Interests.

were “likely to vest” demonstrated a fundamental misunderstanding of the Pro Forma Adjusted Balance Sheet and the vesting mechanics in the CTA. Again, under the CTA, Contingent Trust Interests vest only if, among other things, Class 8 and Class 9 are paid in full. And as the Court further stated, the Claimant Trust Assets at any point in time will only be available for distribution to those classes after they are monetized and all fees and expenses, including indemnification obligations, are satisfied. *See* Order Denying Reconsideration at 3. In other words, as this Court found, unless and until such contingent obligations are *known and satisfied* and all Class 8 and Class 9 Claims have been actually paid in full, Contingent Trust Interests are not “in the money” and will not “vest.”

28. The Court’s finding in its Order Denying Reconsideration, in which the Court determined that Contingent Trust Interests are not “in the money,” has thus eliminated any “live” controversy presented by the relief sought in Count Three, namely, a determination whether Plaintiffs’ Contingent Trust Interests “are likely to vest into Claimant Trust Interests.” For the foregoing reasons, Counts One and Three are moot. The Court does not have subject matter jurisdiction over Counts One and Three under Rule 12(b)(1), and such claims should be dismissed.

### **3. Count Three Improperly Seeks an Advisory Opinion**

29. The Court also does not have subject matter jurisdiction to rule on Count Three because it impermissibly seeks an advisory opinion. Under Article III of the Constitution, “no justiciable controversy is presented when ... the parties are asking for an advisory opinion.” *Paragon Asset Co. Ltd v. Gulf Copper & Mfg. Corp.*, 1:17-CV-00203, 2020 WL 1892953, at \*1 (S.D. Tex. Feb. 11, 2020) (internal quotations omitted). The “well-established constitutional ban on advisory opinions” seeks to ensure that federal courts determine “specific disputes between parties, rather than hypothetical legal questions, and in doing so, conserve judicial resources.” *Texas v. Travis County*, 272 F. Supp. 3d 973, 980 (W.D. Tex. 2017), *aff’d sub nom. Texas v. Travis*

County, Texas, 910 F.3d 809 (5th Cir 2018); see also *Hodgson v. H. Morgan Daniel Seafoods, Inc.*, 433 F.2d 918, 920 (5th Cir. 1970) (“We cannot render an advisory opinion on hypothetical or abstract facts.”)

30. In Count Three, Plaintiffs impermissibly ask the Court to determine whether (a) current Claimant Trust Beneficiaries “*may be* indefeasibly paid” and (b) “Contingent Claimant Trust Interests *are likely* to vest.” Compl. ¶ 94 (emphasis added). Any such determination is dependent upon several hypothetical future events concerning, among other things, asset values and recoveries (*e.g.*, whether the Fifth Circuit sustains the Dondero Parties’ appeal in the Notes Litigation, and the Claimant Trust actually recovers the bonded amounts), actual future Claimant Trust expenses, and the nature and extent of indemnification obligations.<sup>16</sup> As discussed *supra*, indemnification expenses are senior to distributions to the Claimant Trust Beneficiaries, and Claimant Trust Beneficiaries cannot be paid in full unless and until such indemnification expenses are liquidated and satisfied. Contingent Trust Interests therefore cannot vest unless and until indemnification claims are known and paid (and all Class 8 and Class 9 Claims are thereafter paid).

31. In light of the widespread litigation, additional threatened litigation, and continued accrual of related legal fees and expenses, the amount of indemnification obligations remains unknown. Thus, any determination as to whether Plaintiffs’ Contingent Trust Interests “are likely to vest” is contingent upon a number of unknown and contingent variables, including (a) the amount of indemnification obligations and (b) and whether sufficient cash remains to pay Classes 8 and 9 in full after those indemnification obligations (and other expenses) are satisfied. Such an abstract determination is precisely the type of relief precluded by the constitutional ban on advisory

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<sup>16</sup> The Highland Parties request that the Court take judicial notice of the active litigation in the Bankruptcy Case, as reflected in the *Amended Notice of Filing of Active Litigation Involve and/or Affecting the Highland Parties* [Docket No. 3880].

opinions. *See JPay LLC v. Burton*, 3:22-CV-1492-E, 2023 WL 5253041, at \*10 (N.D. Tex. Aug. 15, 2023) (dismissing case for lack of subject matter jurisdiction and declining “to render an advisory opinion on the value of the aggregated claims of a contingent, theoretical class” where such determination is contingent on a “hypothetical facts”). Accordingly, Plaintiffs have failed to show that the Court has subject matter jurisdiction to adjudicate Count Three, and it should be dismissed under Rule 12(b)(1).

**B. Count Three is Barred by Collateral Estoppel**

32. Count Three is also barred by the doctrine of collateral estoppel. Collateral estoppel is referred to as “issue preclusion” and prevents relitigating the same issues or facts decided in a prior proceeding. Collateral estoppel precludes the re-litigation of issues or facts actually litigated in the original action, whether or not the second suit is based on the same cause of action. *See Houston Professional Towing Ass'n v. City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016). “By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, [collateral estoppel] protect[s] against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.” *In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (internal quotations omitted). Collateral estoppel applies when: “(1) the issue at stake is identical to the one involved in the earlier action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in the prior action was a necessary part of the judgment in that action.” *Oyekwe v. Research Now Group, Inc.*, 542 F. Supp. 3d 496, 506 (N.D. Tex. 2021), appeal dismissed, 21-10580, 2021 WL 8776378 (5th Cir Dec. 28, 2021). These elements are easily met here.

33. The issue presented by Count Three—whether Plaintiffs’ “Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests” (Compl. ¶ 94)—is the same as the

issue at stake, and actually litigated, in connection with the Motion for Leave. In support of its Motion to Reconsider, HMIT argued that it had standing to assert its Proposed Claims because HMIT was “in the money” and its Contingent Trust Interests “will vest.” *See* Motion to Reconsider. In adjudicating the Motion to Reconsider, the Court determined that HMIT did not have standing to bring the Proposed Claims because its Contingent Trust Interests were not “in the money.” *See* Order Denying Reconsideration at 3. The issue of whether Contingent Trust Interests were “in the money” for purposes of the Motion to Reconsider, and whether Contingent Trust Interests are “likely to vest,” for purposes of this Complaint, are one and the same. This issue was, without question, litigated in connection with the Motion for Leave. The issue was raised by HMIT in its Motion to Reconsider, contested by the Highland Parties, submitted to this Court for adjudication, and expressly determined. *See Reddy*, 611 B.R. at 810 (“The requirement that an issue be ‘actually litigated’ for collateral estoppel purposes simply requires that the issue is raised, contested by the parties, submitted for determination by the court, and determined.”) (internal quotations omitted). The first and second elements of collateral estoppel are thus met.

34. The third prong of collateral estoppel—whether the Court’s prior ruling on this same issue was necessary or essential to the Order Denying Reconsideration—is likewise satisfied. The Court’s finding that Contingent Trust Interests were not “in the money” was necessary to the Court’s ultimate determination that HMIT did not have standing to assert the Proposed Claims. In other words, to determine whether HMIT could file the Motion for Leave, and later whether to grant the Motion to Reconsider, the Court was required to consider whether Contingent Trust Interests have vested. This was the only issue underlying the Motion to Reconsider, and it was necessary to the Order Denying Reconsideration. Plaintiffs are therefore collaterally estopped from re-litigating this same issue of whether their Contingent Trust Interests will vest. *See In re*

*Derosa-Grund*, 567 B.R. 773, 798 (Bankr. S.D. Tex. 2017) (debtor collaterally estopped from re-litigating issue of whether debtor owned film treatment where this same issue “was necessary” to determination on motion to reopen; was determined; and “Debtor cannot now relitigate this issue in an effort to prove that EMG owns the Treatment”).<sup>17</sup> Accordingly, Count Three is barred by collateral estoppel, and for this additional reason, this claim should be dismissed.

**C. Plaintiffs’ Claims Fail as a Matter of Law**

35. Even if the Court had subject matter jurisdiction over Counts Two and Three, the Complaint fails to state plausible claims upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) as to all Counts. To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550

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<sup>17</sup> Although Dugaboy was not a party in the Motion for Leave, literal identity of the parties is not required as part of the collateral estoppel analysis so long as the party against whom enforcement is sought was in privity with a party involved in the initial decision. Privity exists where a non-party’s interests were adequately represented in the first suit. See *Derosa-Grund*, 567 B.R. at 798 n. 21 (Bankr S.D. Tex. 2017) (noting “federal courts will bind a nonparty whose interests were represented adequately by a party in the original suit,” and “[t]he Fifth Circuit has found that adequate representation exists between a party and a non-party ‘where a party to the original suit is so closely aligned to the non-party’s interests as to be his virtual representative.’”) (quoting *Terrell v. DeConna*, 877 F.2d 1267, 1270 (5th Cir. 1989)). Here, there can be no question that Dugaboy’s interests were sufficiently aligned as to the issue of whether Contingent Trust Interests have vested, where both Dugaboy and HMIT hold those interests and Dugaboy was funding HMIT’s litigation. See *Meador v. Oryx Energy Co.*, 87 F. Supp. 2d 658, 665 (E.D. Tex. 2000) (non-party’s interests were “sufficiently aligned” with party in previous suit for purposes of claim preclusion where, in both cases, “the plaintiffs’ claims derive solely from rights” alleging arising from the same conveyance that was interpreted conclusively in prior suit).

U.S. at 557). “When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679. Dismissal is proper under Rule 12(b)(6) when, taking the facts alleged in the complaint as true, it appears that the plaintiff “cannot prove any set of facts that would entitle it to the relief it seeks.” *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995). “[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp. 2d 919, 926 (N.D. Tex. 2014) (internal quotations omitted). Courts have “complete discretion” to either accept or exclude such evidence for purposes of the motion to dismiss. *Id.*

**1. Plaintiffs’ Equitable Accounting Claim Fails as a Matter of Law**

36. Count One, which seeks an accounting of the Claimant Trust Assets, fails to state a claim upon which relief can be granted under Rule 12(b)(6).

**i. Plaintiffs Have No Rights to Financial Information Because They are Not Claimant Trust Beneficiaries**

37. Plaintiffs have no rights to information regarding the Claimant Trust Assets.

38. *First*, as discussed above and as this Court has found, it is indisputable that Plaintiffs, holding only “Contingent Trust Interests,” are not “Beneficiaries” under the CTA.<sup>18</sup> *See* Order Denying Leave at \*35. As such, Plaintiffs have *no rights* under the CTA. *See id.* (quoting CTA, § 5.1(c)). Plaintiffs ignore this language and fail to offer any support for their broad request for financial information, other than vaguely asserting that they “are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.” Compl. ¶ 83. As this Court found, while Plaintiffs may be “frustrated” that they did not negotiate the same rights

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<sup>18</sup> As discussed above, the Court may take judicial notice of the CTA. *See Johnson*, 999 F. Supp. 2d at 926 (taking judicial notice of document that is a matter of public record when considering Rule 12(b)(6) motion).

as the “actual Claimant Trust Beneficiaries,” (Valuation Order at 5), there is simply no foundation—in law, equity, or otherwise—for Plaintiffs’ request for financial information. Plaintiffs acknowledge that they are not “Claimant Trust Beneficiaries” but nevertheless imply, without any supporting facts or authority, that they should not only be treated as such, but should receive information not otherwise available to Claimant Trust Beneficiaries. In so arguing, Plaintiffs blatantly disregard the plain terms of the CTA, the Plan, and this Court’s prior orders, which expressly foreclose the relief sought in their Claims.

39. **Second**, and for largely these same reasons, equitable relief is not available where, as here, the parties’ rights and obligations at issue are set forth in the agreement. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court’s denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate “cannot be rewritten on equitable grounds,” and noting “[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms.”); *Grunstein v. Silva*, CIV.A. 3932-VCN, 2009 WL 4698541, at \*6 (Del. Ch. Dec. 8, 2009) (“Where those [fiduciary] rights arise from a contract that specifically addresses the matter at issue, the court evaluates the parties’ conduct within the framework they themselves crafted, instead of imposing more broadly defined equitable duties.”).

40. Here, the CTA expressly provides that (a) Plaintiffs are not Beneficiaries of the Claimant Trust, and, therefore, (b) Plaintiffs have no rights under the CTA. *See supra* ¶¶ 10-13. *supra*. Accordingly, the plain language of the CTA forecloses the notion that Plaintiffs have any right—equitable or otherwise—to financial information on the Claimant Trust Assets. Plaintiffs’

attempt to re-write the CTA on equitable grounds in order to grant non-beneficiaries information rights is entirely without merit.

41. **Third**, even if Plaintiffs were Claimant Trust Beneficiaries, any information rights would still be limited. Section 3819(a) of the Delaware Statutory Trust Act (the “Trust Act”) governs information rights for beneficiaries of Delaware statutory trusts and ascribes primacy to the trust’s agreement:

*Except to the extent otherwise provided in the governing instrument of a statutory trust*, each beneficial owner of a statutory trust ... has the right, *subject to such reasonable standards ... as may be established by the trustees or other persons who have authority to manage the business and affairs of the statutory trust*, to obtain from the statutory trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the statutory trust ....

12 Del. C. § 3819(a) (emphasis added); *see also In re Natl. Coll. Student Loan Trusts Litig.*, 251 A.3d 116, 150 (Del. Ch. 2020) (Trust Agreements “are the governing instruments of the Trusts under the DST Act.”) Here, the CTA *does* “otherwise provide.” As discussed *supra*, pursuant to the CTA and the Plan, only “Claimant Trust Beneficiaries,” by design, have information rights, which are set forth in section 3.12(b) of the CTA. *See* CTA § 3.12(b) (providing that the **only** entities with information rights under the Plan are “Claimant Trust Beneficiaries.”) And the Claimant Trust Beneficiaries’ rights (a) are limited, (b) do not include rights to asset or subsidiary level information, and (c) can be further limited by the Claimant Trustee as appropriate to “maintain confidentiality.”

42. Any duties running from the Claimant Trustee to actual Beneficiaries of the Claimant Trust relating to the disclosure of information are expressly limited by the CTA. 12 Del. C. § 3806(c) (“To the extent that ... a trustee ... has duties (including fiduciary duties) to a ... beneficial owner or to another person that is a party to or is otherwise bound by a governing instrument, the trustee’s ... duties may be ... restricted or eliminated by provisions in the governing

instrument ....”) Thus, even the actual Claimant Trust Beneficiaries would not have the broad information rights that Plaintiffs (who, again, are not even Claimant Trust Beneficiaries) seek here. This further undermines Plaintiffs’ unsupported allegations that they have any equitable rights to information on the Claimant Trust Assets.

ii. **Any Claim for an Equitable Accounting Fails Under Delaware Law**

43. To the extent Count One is treated as one for an accounting cognizable in equity, it likewise fails. Under Delaware law,<sup>19</sup> an accounting is not a cause of action sounding in equity. *Williams v. Lester*, 2023-0042-SG, 2023 WL 4883610, at \*3 (Del. Ch. Aug. 1, 2023). It is an equitable remedy by which a fiduciary may be caused to account for property subject to trust. *Id.* A claim for an accounting lies only where “(i) there are mutual accounts between parties, (ii) a fiduciary relationship exists and the defendant has a duty to account, or (iii) the accounts are all on one side but there are circumstances of great complication.” *Bus. Funding Group, Inc. v. Architectural Renovators, Inc.*, C.A. 12655, 1993 WL 104611, at \*2 (Del. Ch. Mar. 31, 1993); *see also McMahon v. New Castle Assoc.*, 532 A2d 601, 605 (Del. Ch. 1987) (“[A] request for an accounting by a *fiduciary* is a recognized basis for chancery jurisdiction,” noting “equity shall rarely, if ever, have to be resorted to in order to determine the state of accounts in a purely commercial relationship.”); 12 Del. C. § 3806(c). Where, as here, an agreement sets forth the fiduciary relationship between the parties, an extra-contractual relationship cannot be created. *See Grunstein v. Silva*, CIV.A. 3932-VCN, 2009 WL 4698541, at \*6 (Del. Ch. Dec. 8, 2009) (“Where those [fiduciary] rights arise from a contract that specifically addresses the matter at issue, the court evaluates the parties’ conduct within the framework they themselves crafted, instead of imposing more broadly defined equitable duties.”)

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<sup>19</sup> There can be no dispute that Delaware law applies to Plaintiffs’ Claims. The Claimant Trust is a statutory trust formed under the laws of Delaware and governed by the Trust Act. Trust Act, 12 Del. C. § 3801 *et seq.*

44. The CTA governs the parties' rights and obligations. Pursuant to the CTA, Plaintiffs, as holders of Contingent Trust Interests, "*shall have no rights*" thereunder, and there is no underlying fiduciary relationship between the Claimant Trustee and Plaintiffs. Plaintiffs do not allege as such, nor could they. The Court cannot impose any duties of disclosure other than what is set forth in the CTA. Plaintiffs' equitable accounting claim fails as a matter of law. *See Bus. Funding Group*, 1993 WL 104611, at \*2 (denying claim for equitable accounting where "the parties' relationship, which is defined exclusively by the purchase and sale agreements, involves an arm's-length commercial dealing and bears none of the earmarks of a fiduciary relationship," noting the "plaintiff negotiated the protection it needed in the [] agreements," which "does not create a fiduciary relationship"); *Natl. Coll.*, 251 A.3d at 150 ("[T]he plain language of the Trust Agreement forecloses any notion that the Owner Trustee owes any extra-contractual duties (fiduciary or otherwise)" to non-owner deal parties, noting "[i]f the drafters of the Trust Agreement ... had intended the Owner Trustee to administer the Trusts in the interests of another deal party, the Trust Agreements would have said so.").<sup>20</sup>

45. Under these circumstances, Plaintiffs fail to show why equity should abrogate the terms of the CTA agreement to create extra-contractual rights relating to the disclosure of financial information or an accounting. This is especially true in light of Plaintiff HMIT's "unclean hands." HMIT is a defendant in an action on a note owed to Highland with current principal and interest owed in excess of \$98 million. *See Adv. Pro. No. 21-03076-sgj*, Docket No. 1, Count 24 (breach of contract claim arising out of HMIT note). HMIT cannot seek equitable relief relating to the

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<sup>20</sup> *See also Henry v. CitiMortgage, Inc.*, 4:11-CV-83, 2011 WL 2261166, at \*8 (E.D. Tex. May 10, 2011), *report and recommendation adopted*, 2011 WL 2214007 (E.D. Tex. June 7, 2011) (dismissing claim for equitable accounting where "Plaintiff does not explain why she is entitled to an accounting, let alone allege any facts to support her requests," noting "an accounting is an equitable remedy and not an independent cause of action."); *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp 2d 919, 935 (N.D. Tex. 2014) (dismissing plaintiff's request for equitable relief because there is a contract between the parties that governs the dispute.)

disclosure of assets of the Claimant Trust when HMIT’s own behavior has violated principles of equity and righteous dealing on issues relevant to the instant Action. Plaintiffs’ equitable claim for financial information on the Claimant Trust is without foundation or support, blatantly disregards the CTA and other applicable documents, and fails to allege a cognizable claim. For this additional reason, Count One should be dismissed.

**2. Plaintiffs’ Claims for Declaratory Relief Fail as a Matter of Law**

46. Plaintiffs’ claims for declaratory relief—Counts Two and Three—also fail to state claims under Rule 12(b)(6). To sustain a claim for declaratory or injunctive relief, a plaintiff must first plead a viable underlying cause of action. *See Collin County, Tex. v. Homeowners Ass’n for Values Essential to Neighborhoods*, 915 F.2d 167, 170-71 (5th Cir. 1990)) (the “federal declaratory judgment act is remedial only ... it is the defendant's underlying cause of action against the plaintiff that is litigated in a suit under the act”); *see also Henry*, 2011 WL 2261166, at \*8 (“The Declaratory Judgment Act is a procedural device that creates no substantive rights and requires the existence of a justiciable controversy.”); *Sivertson v. Citibank, N.A. as Tr. for Registered Holders of WAMU Asset-Back Certificates WAMU Series No. 2007-HE2 Tr.*, 390 F. Supp. 3d 769, 794 (E.D. Tex. 2019) (same). “Where all the substantive, underlying claims are subject to dismissal, a claim for declaratory relief cannot survive.” *Wallace v. U.S. Bank, N.A.*, No. 4:17-CV-437, 2018 WL 1224508, at \*2 (E.D. Tex. Mar. 9, 2018).

47. Plaintiffs’ Claims for declaratory relief in Counts Two and Three fail to state plausible claims because there is no underlying controversy. They are premised on Count One, which, as discussed, is not a cognizable claim. *See* Compl. ¶¶ 90 (“*[o]nce Defendants are compelled to provide information about the Claimant Trust Assets*, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations,” and a declaration that “the conditions are such that their Contingent

Claimant Trust Interests are likely to vest into Claimant Trust Interests”) (emphasis added). Since there is no basis to “compel” the disclosure of financial information and Count One fails as a matter of law, Plaintiffs’ claims for declaratory relief, which are dependent upon such disclosure, likewise fail as a matter of law. *See Johnson*, 999 F. Supp. 2d at 935 (“Because the undersigned has determined that none of Plaintiffs claims can withstand dismissal at this time, Plaintiff’s requests for declaratory and injunctive relief as well as an accounting cannot survive.”)<sup>21</sup>

48. The value of the Claimant Trust Assets and liabilities at any given point is irrelevant to a determination whether Plaintiffs’ Contingent Trust Interests “are likely to vest.” Contingent Trust Interests cannot vest until (a) all Claimant Trust Assets are liquidated, (b) all expenses, including indemnification expenses, are known and have been satisfied, and (c) Claimant Trust Beneficiaries are thereafter paid in full. Until these and other critical variables are known, the financial information Plaintiffs seek in their Complaint is meaningless for purposes of determining “vesting.” *See supra* ¶¶ 36-27. There is no justiciable controversy underlying Plaintiffs’ claims for declaratory relief. Counts Two and Three should be dismissed. The Claims fail as a matter of law, and the Complaint should be dismissed in its entirety.

#### IV. CONCLUSION

WHEREFORE, Highland respectfully requests that the Court grant the Motion and enter an order in the form annexed to the Motion as Exhibit A, and grant such further relief as the Court deems just and proper.

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<sup>21</sup> *See also Washington v. JP Morgan Chase Bank, N.A.*, 3:18-CV-1870-K-BN, 2019 WL 587289, at \*8 (N.D. Tex. Jan. 18, 2019), *report and recommendation adopted*, 2019 WL 586048 (N.D. Tex. Feb. 12, 2019) (“Because Plaintiff has failed to state a plausible underlying claim, Plaintiff’s claims for injunctive and declaratory relief should also be dismissed.”); *Henry*, 2011 WL 2261166, at \*9 (“As Plaintiff has alleged no facts that would lead to the conclusion that a present controversy exists between her and Defendants, Plaintiff does not have a right to relief under the Declaratory Judgment Act.”)

Dated: November 22, 2023

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# EXHIBIT 16

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RiverBirch Capital  
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*Counsel for Hunter Mountain Investment Trust*

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

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*In re*

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Reorganized Debtor.<sup>1</sup>

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§  
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§

Chapter 11

Case No. 19-34054-sgj11

**HUNTER MOUNTAIN INVESTMENT TRUST’S RESPONSE IN OPPOSITION TO  
HIGHLAND’S MOTION TO STAY CONTESTED MATTER [DKT. NO. 4000] OR FOR  
ALTERNATIVE RELIEF**

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<sup>1</sup> The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] (“*Plan*”), filed by Highland Capital Management, L.P. (“*HCMLP*”) became effective on August 11, 2021 (the “*Effective Date*”).

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## I. INTRODUCTION

1. To avoid consideration on the merits of Hunter Mountain Investment Trust’s (“HMIT”) well-founded motion for leave (“Motion for Leave”) to bring suit in Delaware (the “Delaware Complaint”) to remove James Seery (“Seery”) as Claimant Trustee because of his conflicts of interest and hostility towards HMIT, Highland Capital Management, L.P., the reorganized debtor in this chapter 11 case (“HCMLP”), and the Highland Claimant Trust (“Claimant Trust”) (collectively, “Highland”) filed a motion (“Motion to Stay”) requesting the Court to indefinitely stay all proceedings in connection with HMIT’s Motion for Leave.<sup>2</sup> In short, Highland is attempting to insulate Seery from having to justify his conduct to the Delaware court tasked with protecting Delaware trusts from conflicted hostile trustees. Even worse, Highland seeks to prevent prompt effective appellate review of this matter by preventing this Court from resolving its merits.

## II. PERTINENT BACKGROUND

2. The Delaware Complaint seeks to remove Seery because he continues to breach his fiduciary duties, including his duty of loyalty, by, among other things, using an exorbitant amount of the Claimant Trust to fund a separate indemnity sub-trust (to pay his own legal expenses), and hold still other funds in reserve, rather than using those funds to pay the claims of Claimant Trust beneficiaries. The only plausible explanation for Seery’s refusal to pay the Class 8 and 9 creditors is an effort to try to prevent the Contingent Interest Holders’ interests (including those held by HMIT) from being recognized as vested under terms of the Claimant Trust Agreement (“CTA”), an action that is clearly not in the best interests of the unsecured creditors or equity (*i.e.* Classes 8, 9, 10 and 11).<sup>3</sup>

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<sup>2</sup> Motion to Stay at ¶ 13.

<sup>3</sup> Motion for Leave at pp. 23-29.

3. In support of its position that it has standing to prosecute the claims in the Delaware Complaint, HMIT asserts in its Motion for Leave that it is actually “in the money” or, alternatively, should be recognized as being “in the money” and a vested beneficiary because Seery’s failure to file a GUC Certification declaring HMIT’s status as such breaches his duty of good faith and fair dealing.<sup>4</sup> HMIT also argues that it has standing as an intended contingent beneficiary under Delaware law.<sup>5</sup> However, it is Seery’s actions as a fiduciary, not the valuation of estate itself, that is the core of claim to be asserted under the Motion for Leave.

4. Highland argues in its Motion to Stay that all proceedings related to the Motion for Leave should be indefinitely stayed until entry of a final, non-appealable order in a separately filed adversary proceeding commenced by Dugaboy Investment Trust (“Dugaboy”) and HMIT (“Valuation Proceeding”). In the Valuation Proceeding, the parties seek a determination by the Court of the value of the estate and an accounting of the assets held by the Claimant Trust. Highland moved to dismiss the Valuation Proceeding, arguing, among other things, that both Dugaboy and HMIT lack standing because they are purportedly not beneficiaries of the Claimant Trust.<sup>6</sup> Highland alternatively argued that the claims in the Valuation Proceeding should be dismissed because: (1) the Court lacks subject matter jurisdiction, (2) HMIT improperly seeks an advisory opinion, (3) the claims are barred by collateral estoppel, and (4) the claims fail as a matter of law.<sup>7</sup> Dugaboy and HMIT opposed the motion to dismiss.<sup>8</sup>

5. Highland argues in its Motion to Stay that the Motion for Leave should be indefinitely stayed until the Valuation Proceeding is finally concluded, including appeals, because a ruling on

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<sup>4</sup> Motion for Leave at pp. 18-19.

<sup>5</sup> Motion for Leave at pp. 16-22.

<sup>6</sup> Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust’s Motion to Dismiss Complaint, Adv. Proc. 23-03038, Dkt. No. 14 (“Motion to Dismiss”) at p. 3.

<sup>7</sup> See Motion to Dismiss.

<sup>8</sup> The Dugaboy Investment Trust and Hunter Mountain Investment Trust’s Response to the Highland Parties’ Motion to Dismiss Complaint, Adv. Proc. 23-03038, Dkt. No. 17.

whether HMIT is a beneficiary of the Claimant Trust in the Valuation Proceeding will “necessarily dispose” of the Motion for Leave. Highland also argues that HMIT will not be harmed by a stay because a stay will not force HMIT to “wait *any* time for that issue to be litigated.”<sup>9</sup> Highland is incorrect and its Motion should be denied for two primary reasons. First, HMIT will be prejudiced by an indefinite stay of the Motion for Leave and Highland will not be harmed by a denial of the requested stay. Second, the standing issues in the Delaware Complaint and the Valuation Proceeding are not identical because the two proceedings assert different bases for the claims asserted in each proceeding. Thus, the Court should deny the Motion.

### III. ARGUMENT

#### A. Highland Does Not Even Attempt to and Cannot Satisfy the Legal Standard for Seeking a Stay

6. When asked to consider whether to grant a stay of litigation, this Court must determine “(1) whether the applicant has made a strong showing of likelihood to succeed on the merits; (2) whether the movant will be irreparably harmed absent a stay; (3) whether issuance of a stay will substantially injure other interested parties; and (4) where the public interest lies.” *Texas v. United States*, 40 F.4th 205, 215 (5th Cir. 2022) (quoting *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019)); see also *McCoy v. SC Tiger Manor, LLC*, No. CV 19-723-JWD-SDJ, 2022 WL 164537, at \*1 (M.D. La. Jan. 18, 2022) (applying these four factors to deny motion to stay pending resolution of related action). The applicant’s “burden is a substantial one, as a stay is an ‘extraordinary remedy.’” *Texas v. United States*, 40 F.4th 205, 215 (5th Cir. 2022) (quoting *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019). “The Supreme Court has characterized the circumstances in which a stay is appropriate as ‘rare.’” *Jamison v. Esurance Ins. Servs., Inc.*, No. 3:15-CV-2484-B, 2016 WL 320646, at \*4 (N.D. Tex. Jan. 27, 2016) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)).

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<sup>9</sup> Motion to Stay at pp. 5-6.

7. Notably, the Motion to Stay lacks this standard (or any standard at all), and Highland fails to even attempt to satisfy it in their brief other than to recount a superficial and incorrect analysis of the harm that would be suffered by HMIT if the stay is granted (as discussed below). This alone is fatal to the Motion to Stay being granted.

8. Rather than addressing the appropriate factors, Highland instead cites to one irrelevant criminal case in which the Fifth Circuit denied a stay of an appeal that the government requested based on its position that it would eventually dismiss the appeal if a superseding indictment survived dismissal. In doing so, the Fifth Circuit cited *Landis* for the unremarkable proposition that the “power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”<sup>10</sup>

9. A stay is not appropriate simply because other litigation pends involving a similar or even the same standing question. *See Jamison v. Esurance Ins. Servs., Inc.*, No. 3:15-CV-2484-B, 2016 WL 320646, at \*4 (N.D. Tex. Jan. 27, 2016). For example, in *Jamison*, the defendant requested a stay pending the Supreme Court’s rulings on two separate cases addressing standing and mootness questions that were also present in the *Jamison* case. *Id.* at \*1. The Northern District of Texas rejected the request, finding, that “[b]ecause standing is a subject matter jurisdiction question, it can be raised at any time during the litigation.” *Id.* at \*4. Accordingly, “[a]llowing the case to proceed inflict[ed] no significant hardship” because the defendant could raise the standing issue after the Supreme Court’s ruling, if applicable. *Id.* Thus, the court denied the defendant’s motion to stay. *Id.*; *see also Alexander v. Navient Sols., Inc.*, No. 5:15-CV-00837-RP, 2016 WL 11588317, at \*2 (W.D. Tex. Feb. 19, 2016) (denying motion to stay, which sought to stay proceeding pending resolution of standing

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<sup>10</sup> Motion to Stay at ¶ 9, fn 8.

issue in U.S. Supreme Court case, because “[s]tanding is jurisdictional, and Defendant can reassert at any time that this Court lacks the jurisdiction to hear Plaintiffs’ claim”).

10. The Supreme Court has held that “[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299 U.S. at 255. For example, in *Landis*, respondents sought to enjoin enforcement of the Public Utility Holding Company Act of 1935 by arguing that it was unconstitutional. *Id.* at 249. After respondents filed suit, several other lawsuits seeking the same relief were filed throughout the country. *Id.* at 250. The Government filed a motion to stay in order to secure an early determination of its rights by proceeding with certain test cases. *Id.* at 250-51. Although the stay was initially granted, the Supreme Court granted certiorari and vacated the “unreasonable” stay order because “the proceedings in the District Court have continued more than a year. With the possibility of an intermediate appeal to the Circuit Court of Appeals, a second year or even more may go by before this court will be able to pass upon the Act.” *Id.* at 256. Here, a cursory examination of the various appeals in this bankruptcy establishes that it will take several years for proceedings and their later appeals to be finally concluded.<sup>11</sup>

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<sup>11</sup> For example, while the Court issued its final reports recommending summary judgment in the Notes Cases on December 5, 2022, and January 17, 2023, the District Court did not issue its orders adopting the reports until July 6, 2023, and the briefing schedule in the Fifth Circuit has not even been issued, yet. *Highland Capital Mgmt., L.P. v. Dondero, et al.*, Consol. Case No. 3:21-cv-00881-x (N. D. Tex.), Dkts. 89, 97, 135; *In the Matter of Highland Capital Management, L.P.*, Case No. 23-10911 (5th Cir.). As another example, with respect to the appeal of the HarbourVest settlement order, the notice of appeal was filed on February 1, 2021, and the Fifth Circuit did not issue its decision until July 31, 2023, 910 days later. Dkt. 1870; *Matter of Highland Capital Management, L.P.*, No. 22-10960, 2023 WL 4861770 (5th Cir. July 31, 2023). With respect to the appeal of the UBS settlement order, the notice of appeal was filed on May 27, 2021, and the Fifth Circuit did not issue its decision until July 28, 2023, 792 days later. Dkt. 2398; *Matter of Highland Capital Mgmt., L.P.*, No. 22-10983, 2023 WL 4842320 (5th Cir. July 28, 2023). With respect to the appeal of the Plan order, the notice of appeal was filed on March 1, 2021, and the Fifth Circuit did not issue its decision until August 19, 2022, 536 days later. Dkt. 1957; *In re Highland Capital Mgmt., L.P.*, No. 19-34054-SGJ11, 2022 WL 3959550 (Bankr. N.D. Tex. Aug. 30, 2022). With respect to the appeal of the Order approving the trust, the notice of appeal was filed on August 4, 2021, and the Fifth Circuit did not issue its decision until January 11, 2023, 525 days later. Dkt. 2673; *Matter of Highland Capital Mgmt., L.P.*, 57 F.4th 494 (5th Cir. 2023).

**B. A Stay Would Unduly Harm HMIT and a Denial of a Stay Would Not Harm Highland**

11. Highland's Motion to Stay should be denied because HMIT will suffer irreparable harm as a result of an indefinite stay of the Motion for Leave (and, by extension, its prosecution of the claims in the Delaware Complaint). Highland ignores the delay that will necessarily occur if a stay is ordered and instead focuses on the fact that a stay "will not force HMIT to wait *any* time for that issue [of whether it is a beneficiary of the Claimant Trust] to be litigated and decided, much less an 'indefinite' or even 'lengthy' time."<sup>12</sup> Highland misses the point. It is not the delay of a decision on this one issue that matters, it is the delay of HMIT's ability to move forward with its claims in the Delaware Complaint so that can Seery can be removed that matters.

12. As detailed in its Motion for Leave, HMIT has pleaded serious allegations against Seery that require his immediate removal as trustee. These allegations, include, but are not limited to, breaching his duty of loyalty by failing to pay creditors, failing to file the GUC Certification, failing to certify that equity holders are vested under the CTA, failing to maximize the value of the Claimant Trust for the benefit of its beneficiaries by filing unnecessary proceedings, and spending inordinate amounts of cash on unnecessary professional fees.<sup>13</sup> Seery has also used the Claimant Trust to his own pecuniary advantage by funding an increasingly sizable indemnification reserve that enables Seery to remain employed at \$150,000 a month, and is the excuse for Seery to avoid certifying that HMIT and other Class 10 and 11 holders are Claimant Trust Beneficiaries.<sup>14</sup> These actions (and inactions) by Seery are ongoing and will continue to prejudice and harm HMIT as long as they continue. For example, Seery will continue to unnecessarily spend funds as a false cover for Seery's

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<sup>12</sup> Motion to Stay at pp. 5-6.

<sup>13</sup> Motion for Leave at pp. 23-24.

<sup>14</sup> Motion for Leave at pp. 10-11.

failure to certify that HMIT is “in the money,” a tactic also intended to prevent HMIT from ever challenging Seery's tenure as trustee.

13. In other words, it is not the delay in having the specific standing issue decided, as Highland suggests, that could harm HMIT. The harm to HMIT is the delay in having the allegations in the Delaware Complaint addressed by a court because Seery’s unlawful behavior continues without effective oversight. There is no visibility into precisely what is being paid from the Indemnity Sub-trust, enabling excessive spending to go unchecked. One only needs to look at the hearing participants list for nearly every hearing, no matter how minor, to see the huge number of lawyers attending in addition to the already large number appearing. With the burn rate shown by the last several quarterly reports (averaging approximately \$5.4 million a month for 2023),<sup>15</sup> the harm of a multi-year delay is manifest. Highland’s Motion to Stay fails to address these issues or any of the allegations raised related to Seery in the Motion for Leave.

14. What this means is that HMIT will be severely harmed regardless of this Court’s ultimate decision on the standing issue if the stay is granted. If the Court denies Highland’s request for a stay, HMIT will be able to immediately appeal if this Court agrees with Highland and finds that HMIT lacks standing in the Valuation Proceeding and in the Motion for Leave. But if the stay is granted and the Court agrees with Highland and finds that the HMIT lacks standing in the Valuation Proceeding, Highland will argue that HMIT must wait years (through all appeals of the Valuation Proceeding decision) to have the standing issue in the Motion for Leave addressed by an appellate court, which is exactly what Highland seeks in bringing its Motion to Stay.

15. Even worse, if an indefinite stay is granted, as Highland requests, and if this Court, the District Court, or the Fifth Circuit agrees with HMIT and finds that it has standing in the Valuation Proceeding, HMIT still would be unable to move forward with its Motion for Leave until *all* appeals

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<sup>15</sup> Dkt. Nos. 3756, 3757, 3888, 3889, 3955 and 3956.

in the Valuation Proceeding are concluded under the requested stay. In other words, even if HMIT is correct and successful at every level of appeal in the Valuation Proceeding, it will still be prejudiced by being forced to delay the Motion for Leave and prosecuting the Delaware Complaint for several years while the Valuation Proceeding works its way through the appellate process. And as the Fifth Circuit held in *In re Ramu Corp.*, “[e]ven discretionary stays, however, will be reversed when they are ‘immoderate or of an indefinite duration.’” 903 F.2d 312, 318 (5th Cir. 1990) (citing *McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982)). While it is obvious that Highland and Seery would prefer this outcome, it is unfair and prejudicial to HMIT, and therefore impermissible. The only way to avoid this possible outcome is for the Motion for Leave to proceed as scheduled.

16. On the other hand, a denial of the requested stay will not harm Highland, let alone irreparably harm Highland as required by the standards set forth above. Highland’s premise for its Motion to Stay, that a stay will “conserve judicial resources and the time, effort, and expense of the litigants,”<sup>16</sup> is not true. As Highland recognizes, it has already briefed whether HMIT is a beneficiary of the Trust in the Valuation Proceeding.<sup>17</sup> Nowhere in its Motion to Stay does Highland explain how it would be prejudiced or harmed by briefing an issue that it has already briefed and that it contends is identical in both proceedings.

17. Highland also waited two weeks before making its Motion for Stay and set the motion for its hearing ***after the deadline for its response to the Motion for Leave***. It surely then had at least partially prepared a response – or is it really going to admit it was so certain of this Court’s decision that it did nothing?

18. If Highland argues that the Motion for Leave constitutes an unnecessary expense to the estate, that argument fails for multiple reasons. First, it is the almost entirely opaque expenditure

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<sup>16</sup> Motion to Stay at ¶ 8.

<sup>17</sup> Motion to Stay at ¶ 1.

of \$5.4 million per month by the Seery-directed estate that is the issue in the motion for leave. Sunlight will be the best disinfectant. Second, this argument rings hollow, as it can be made any time that Highland faces a motion it does not want to defend, even though Highland regularly insists that its own offensive motions (such as the Motion for Sanctions brought against Scott Ellington that was abruptly abandoned in mid-hearing and which could have been resolved by Highland with a phone call) are entirely necessary. Third, if there is anything that the estate should be spending its money on, it is explaining to the Claimant Trust beneficiaries and contingent beneficiaries what exactly is being done with their money by their fiduciaries.

**C. The Standing Issues Raised in the Valuation Proceeding and the Motion for Leave Are Not Identical**

19. Even if Highland satisfied the above standard, which it did not, Highland's Motion to Stay turns on its mistaken belief that whether HMIT has standing is identical in both the Valuation Proceeding and the Motion for Leave/Delaware Complaint. Highland is incorrect.

20. As discussed above, while HMIT seeks information about the Claimant Trust's assets in the Valuation Proceeding, it seeks to have Seery removed as Trustee as part of the Delaware Complaint because he has breached his fiduciary duties and because he has breached the duties of good faith and fair dealing. As a result, not only is standing in the Delaware Complaint based on HMIT's status as a beneficiary under Delaware law, but it is also based on Seery's failure to file a GUC Certification declaring HMIT's status and confirming that HMIT is "in the money" so that Seery can use this manipulation to, among other self-serving things, argue against HMIT's standing. In its Motion for Leave, HMIT seeks to remove Seery and alleges that it has standing to do so not only because it should be recognized as being "in the money," but also because HMIT must be treated as a beneficiary under applicable Delaware law, lest Seery's conflicted position and breaches of the duty of good faith and fair dealing give him the opportunity to unilaterally deprive HMIT of what should

be recognized as HMIT's status as a beneficiary.<sup>18</sup> The very claims sought to be brought in the Delaware Complaint turn on an analysis of Seery's conflicts and conduct.<sup>19</sup>

21. The claims asserted by HMIT in the Valuation Proceeding, on the other hand, are not mainly premised on Seery's breaches and failure to allow HMIT's interest to vest. That suit instead largely seeks information to enable the proposed plaintiffs to protect their interests. In other words, although similar, the reasoning and bases for HMIT's standing is not identical in the two proceedings, and therefore a decision on HMIT's standing in the Valuation Proceeding will not be identical to the issue as it is framed in the Motion for Leave. Indeed, because of the multiple arguments in each of the cases, the Valuation Proceeding decision may not address the issues in the Motion for Leave to file the Delaware Complaint at all. And if the Court does make a ruling on standing in the Valuation Proceeding that Highland wishes to rely upon in this proceeding, it could attempt to make that argument at that time, as discussed above in *Jamison*. Therefore, a stay of the proceedings related to the Motion for Leave is inappropriate.<sup>20</sup>

**D. HMIT will be Prejudiced by Denial of its Right to have the Substantive Issues Resolved by a Delaware Court.**

22. As set forth in the Motion for Leave, HMIT's rights under the Claimant Trust Agreement are subject to Delaware law to be decided by a Delaware Court. *See* Motion for Leave at ¶¶ 47–48 (*citing* Del. Code Ann. Tit. 12, § 3804(e)). HMIT has the right to have its asserted claims

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<sup>18</sup> Motion for Leave at pp. 19-20.

<sup>19</sup> Motion for Leave at pp. 23-29.

<sup>20</sup> As an alternative to a stay, Highland requests that the Court give Highland a 21-day extension of time to respond to the Motion for Leave if the Court denies the Motion to Stay. Motion to Stay at fn 2. Initially, Highland has already asked for and received a one-week extension to respond to the Motion for Leave, therefore no further extension should be necessary. Additionally, given that Highland's eight-page Motion could have been made within days of the filing of the Motion for Leave, this Court should not condone Highland's arrogant effort to force delay with the timing of its Motion to Stay. Either Highland really has partially prepared its response to the Motion for Leave, making its argument that it is seeking to save the estate money disingenuous, or it deliberately decided to wait until the last minute to seek its relief, thereby attempting to achieve prejudicial delay, regardless of the Court's decision. Either way Highland is acting in bad faith and that too is reason to deny the Motion to Stay, and to allow only the most minimal time to respond to the Motion for Leave, if any.

decided by a Delaware Court. This is because the removal of a trustee is a “matter[] relating to the organization or internal affairs of a statutory trust.” *United Bhd. of Carpenters Pension Plan v. Fellner*, C.A. No. 9475-VCN, 2015 WL 894810, at \*2 n. 13 (Del. Ch. Feb. 26, 2015). Where a company’s internal affairs are involved, Delaware law disregards the forum selection clause in the parties’ trust agreement. *Id.* The Claimant Trust Agreement’s governing Delaware law squarely rejects Highland’s assertion that a determination of the Valuation Proceeding by a Texas court serves as an adequate substitute for a Delaware court adjudicating HMIT’s substantive rights under the Claimant Trust Agreement.

23. Highland, not HMIT, chose to make the Claimant Trust a Delaware entity governed by both Delaware law *and* the Delaware courts under the internal affairs doctrine. *See id.* Accordingly, both HMIT as putative plaintiff and Highland as the author of the Claimant Trust have selected Delaware as the proper forum for adjudication of their substantive rights regarding HMIT’s claims in this case. *See In re Volkswagen of Am., Inc.* 545 F.3d 304, 314 (5th Cir. 2010) (courts generally should give deference to a plaintiff’s choice of forum). The Motion to Stay is nothing but a transparent attempt, formulated years after the approval of the Claimant Trust Agreement’s provisions, to prevent a substantive determination of HMIT’s rights by the Claimant Trust-mandated Delaware court.

#### **IV. CONCLUSION**

24. As the court stated in *Gold v. Johns-Manville Sales Corp.*, the case cited by Highland in support of its Motion to Stay, a party must demonstrate “a clear case of hardship or inequity” if there is “even a fair possibility” that a stay would damage the other party before a stay will be issued. 723 F.2d 1068, 1075-76 (3d Cir. 1983). And as Highland recognized in its Motion, “Courts are sensitive to the prejudice a stay would have on the non-moving party, such as ‘the hardship of

being forced to wait an indefinite and ... lengthy time before their causes are heard.”<sup>21</sup> This is exactly the case here. An indefinite stay of the Motion for Leave will harm HMIT, and a denial of the stay will not impact Highland in any meaningful way, let alone irreparably harm Highland as required under the law set forth above. Therefore, the Motion to Stay should be denied in its entirety.

Respectfully submitted,

**STINSON LLP**

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*Counsel for The Hunter Mountain Investment Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 23, 2024, a true and correct copy of this document was served electronically via the Court’s CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

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<sup>21</sup> Motion at ¶ 9, fn 9 (citing *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1076 (3d Cir. 1983)).



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 31, 2024

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
  
Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj

**ORDER GRANTING IN PART HIGHLAND'S  
MOTION TO STAY CONTESTED MATTER**

Having considered (a) *Highland's Motion to Stay Contested Matter [Dkt No. 4000]* or for *Alternative Relief* [Docket No. 4013] (the "Motion")<sup>1</sup> filed by Highland Capital Management, L.P. ("HCMLP"), the reorganized debtor in the above-referenced bankruptcy case, and the Highland Claimant Trust (the "Trust" and together with HCMLP, "Highland"); (b) *James P. Seery, Jr.'s Joinder to Highland Capital Management, L.P.'s Motion to Stay Contested Matter [Dkt No. 4000]* or for *Alternative Relief and Emergency Motion to Expedite Hearing on Motion for Stay* [Docket

<sup>1</sup> Capitalized terms not defined herein shall take on the meanings ascribed to them in the Motion.

No. 4019] filed by James P. Seery, Jr.; (c) *Hunter Mountain Investment Trust's Response in Opposition to Highland's Motion to Stay Contested Matter [Dkt No. 4000]* or for Alternative Relief [Docket No. 4022] filed by Hunter Mountain Investment Trust's ("HMIT"); (d) the arguments heard at the hearing on the Motion on January 24, 2024 (the "Hearing"); and (e) all prior proceedings relating to this matter; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and for the reasons set forth by this Court on the record during the Hearing; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED IN PART** as set forth herein.
2. All proceedings in connection with the *Motion for Leave to File a Delaware Complaint* [Docket No. 4000] (the "Motion for Leave") are hereby stayed until the Court (a) issues an order determining *The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust* [Adv. Proc. 23-03038-sgj, Docket No. 13] (the "Motion to Dismiss"), and (b) holds a status conference with the parties in connection with the Motion for Leave during which the Court will consider whether to terminate or extend the stay (and, if the stay is terminated, to establish a briefing schedule for the Motion for Leave).
3. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**###End of Order###**

**STINSON LLP**

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*Counsel for Hunter Mountain Investment Trust*

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

<i>In re</i>  HIGHLAND CAPITAL MANAGEMENT, L.P.,  Reorganized Debtor. <sup>1</sup>	§ § § § § § § §	Chapter 11  Case No. 19-34054-sgj11
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**HUNTER MOUNTAIN INVESTMENT TRUST’S SUPPLEMENT  
TO RESPONSE TO MOTION TO STAY**

Hunter Mountain Investment Trust submits the following Supplement to Response to Stay in anticipation of the status conference, currently scheduled for June 12, 2024.

On January 1, 2024, Hunter Mountain Investment Trust ("HMIT") filed its Motion for Leave to File a Delaware Complaint [Dkt. No. 4000] (the "Motion for Leave"). HMIT filed the Motion for Leave, seeking permission to file a complaint in Delaware asking the court to remove James Seery as Clamant Trustee as a result of his breach of his fiduciary duties.

<sup>1</sup> The *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., (As Modified)* [Dkt. No. 1808] ("**Plan**"), filed by Highland Capital Management, L.P. ("**HCMLP**") became effective on August 11, 2021 (the "**Effective Date**").

HCMLP and the Highland Claimant Trust filed a motion ("Motion to Stay") asking the court to indefinitely stay all proceeding in connection with HMIT's Motion for Leave. On January 31, 2024, the court issued an Order Granting in Part Highland's Motion to Stay Contested Matter, in which the court stayed all proceedings until the court issued an order determining The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Adv. Proc. 23-03038-sgj, Dkt. No. 13], and holds a status conference with the parties in connection with the Motion for Leave to consider whether to terminate or extend the stay.

On May 24, 2024, the court issued its opinion on the Motion to Dismiss Complaint and the court scheduled a status conference pursuant to the order for June 12, 2024.

HMIT is filing this supplement to bring additional cases to the court's attention that are relevant to the standing issue. Specifically, attached is Exhibit A is a true and correct copy of the opinion issued by the Delaware Supreme Court in *Morris v. Spectra Energy Partners (DE) GP, LP*, 246 A.3d 121, 136 (Del. 2021).

*Morris* demonstrates how the Delaware Supreme Court has held that a standing analysis should be more flexible when a defendant controls the facts giving rise to standing. By way of example, although standing to assert derivative claims in the context of mergers typically requires equity ownership, there are exceptions. One of these exceptions includes when “the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action.” *Morris*, 246 A.3d at 129 (Del. 2021). *Morris* stands for the

proposition that strict adherence to formulaic standing on a motion to dismiss must yield where the defendant's allegedly unfair conduct attempts to destroy standing.<sup>2</sup>

Similarly, HMIT also submits a true and correct copy of the following case: *Shaev v. Wyly*, 1998 WL 13858, at \*4 (Del. Ch. Jan. 6, 1998) (equitable standing allowed to challenge excessive compensation of directors because “to deny standing on these facts would insulate defendants from potential liability for their alleged misdeeds”), as Exhibit B.

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<sup>2</sup> HCMLP is familiar with each of these cases submitted here as they were cited in Appellant's Reply Brief, *Hunter Mountain Investment Trust v. Highland Capital Management, L.P.*, et al., Case No. 3:23-cv-02071-E, Doc. No. 38. <https://www.kccllc.net/hcmlp/document/193405424040400000000001>

Respectfully submitted,

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*Counsel for The Hunter Mountain Investment Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 11, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT A

## HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO RESPONSE TO MOTION TO STAY



KeyCite Yellow Flag - Negative Treatment

Distinguished by SDF Funding LLC v. Fry, Del.Ch., June 16, 2022

246 A.3d 121

Supreme Court of Delaware.

Paul MORRIS, on behalf of all similarly situated unitholders of Spectra Energy Partners, L.P., Plaintiff Below, Appellant,

v.

SPECTRA ENERGY PARTNERS (DE) GP, LP, Defendant Below, Appellee.

No. 489, 2019

|

Submitted: October 28, 2020

|

Decided: January 22, 2021

### Synopsis

**Background:** Former minority unitholder of acquired master limited partnership brought class action against general partner, alleging that merger exchange ratio was unfair because general partner agreed to merger that did not reflect material value of his derivative claims. The Court of Chancery, Sam Glasscock, Vice Chancellor, 2019 WL 4751521, dismissed the action. Minority unitholder appealed.

**Holdings:** The Supreme Court, Seitz, C.J., held that:

[1] challenge to fairness of merger itself was preserved for appeal;

[2] arguments about materiality were preserved for appeal; and

[3] derivative claim was material at motion to dismiss stage.

Reversed and remanded.

**Procedural Posture(s):** On Appeal; Motion to Dismiss for Lack of Standing.

West Headnotes (18)

[1] **Corporations and Business Organizations** Effect of merger, acquisition, reorganization, or dissolution  
**Corporations and Business Organizations** Fairness of transaction  
With limited exceptions, a merger extinguishes an equity owner's standing to pursue a derivative claim against the target entity's directors or controller, but the same plaintiff has standing to pursue a post-closing suit if they challenge the validity of the merger itself as unfair because the controller failed to secure the value of a material asset, like derivative claims that pass to the acquirer in the merger.

[2] **Corporations and Business Organizations** Fairness of transaction  
To establish standing to pursue a claim challenging a merger because the equity owners are not being fairly compensated for the value of material derivative claims, the plaintiff must allege a viable derivative claim, that is material to the overall transaction, and will not be pursued by the buyer and is not reflected in the merger consideration.

6 Cases that cite this headnote

[3] **Appeal and Error** Corporations and other organizations  
De novo review applies to a Court of Chancery's finding that a plaintiff lacked standing to pursue his post-merger claims challenging the fairness of a merger consideration for failure to recoup some or all of the value of the derivative claims.

5 Cases that cite this headnote

[4] **Action** Persons entitled to sue  
Standing refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance.

3 Cases that cite this headnote

- [5] **Action** ➦ Persons entitled to sue  
**Constitutional Law** ➦ Advisory Opinions  
Standing is required to ensure that the litigation before the tribunal is a “case or controversy” that is appropriate for the exercise of the court’s judicial powers; it allows Delaware courts, as a matter of self-restraint, to avoid the rendering of advisory opinions at the behest of parties who are mere intermeddlers.

2 Cases that cite this headnote

- [6] **Action** ➦ Persons entitled to sue  
Standing is properly a threshold question that a court may not avoid.

3 Cases that cite this headnote

- [7] **Action** ➦ Persons entitled to sue  
If a plaintiff alleges a direct claim, it means that the equity owner has alleged that they have suffered the injury, and will receive the benefit of any recovery; thus, at least at the pleading stage, the plaintiff has met the injury-in-fact requirement and properly invoked the court’s jurisdiction to redress an injury.

- [8] **Corporations and Business**  
**Organizations** ➦ Derivative action as distinct from direct or individual action in general  
For a derivative action, the equity owner acts in a representative capacity on behalf of an entity; in that representative capacity, the plaintiff steps into the shoes of the entity and asserts the injury on its behalf.

1 Case that cites this headnote

- [9] **Corporations and Business**  
**Organizations** ➦ Effect of merger, acquisition, reorganization, or dissolution  
An equity owner does not have standing to pursue derivative claims post-merger except

when the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action, and when the merger is essentially a reorganization that does not affect the equity owner’s relative ownership in the post-merger enterprise.

1 Case that cites this headnote

- [10] **Corporations and Business**  
**Organizations** ➦ Fairness of transaction  
**Corporations and Business**  
**Organizations** ➦ Good faith and fiduciary duties

To state a direct claim with respect to a merger, a stockholder must challenge the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing or unfair price.

2 Cases that cite this headnote

- [11] **Corporations and Business**  
**Organizations** ➦ Purchase or Sale of Stock to or from Director, Officer, or Agent  
A cause of action for misuse of confidential corporate information, requires a plaintiff to demonstrate that: (1) the corporate fiduciary possessed material, nonpublic company information, and (2) the corporate fiduciary used that information improperly by making trades because she was motivated, in whole or in part, by the substance of that information.

- [12] **Appeal and Error** ➦ Nature or Subject-Matter of Issues or Questions  
Challenge to fairness of merger itself was preserved for appeal by former minority unitholder of acquired master limited partnership, in action against general partner, where minority unitholder alleged that former public unitholders were harmed because general partner allowed acquiring business to engineer “roll up” of minority-held units involving merger between limited partnership and acquiring business on terms that were patently unfair

and unreasonable to limited partnership and its public unitholders, and that could not have been approved in good faith by new conflicts committee or general partner's board.

[13] **Appeal and Error** ➔ Nature or subject-matter in general

Arguments about materiality were preserved for appeal of dismissal of class action that had been brought by former minority unitholder of acquired master limited partnership alleging that merger exchange ratio was unfair because general partner agreed to merger that did not reflect material value of his derivative claims, since general partner disputed how court should consider litigation risk when assessing materiality by arguing that minority unitholder's chance of prevailing on derivative claims was "toss-up" or "one-in-five" chance.

[14] **Partnership** ➔ Persons entitled to sue; standing

Derivative claim was material at motion to dismiss stage, and therefore former minority unitholder of acquired master limited partnership had standing to bring class action alleging that merger exchange ratio was unfair because general partner agreed to merger that did not reflect material value of his derivative claims; even if it was proper to discount \$660 million in damages alleged in complaint to reflect public unitholders' interest in derivative recovery, \$112 million pro rata interest in derivative claim recovery was comparable to public unitholders' 17 percent proportional interest in merger consideration that was valued at \$3.3 billion, i.e., \$112 million had to be compared to \$561 million.

[15] **Corporations and Business Organizations** ➔ Fairness of transaction

When the court is faced with a post-merger claim challenging the fairness of a merger based on the defendant's failure to secure value for derivative claims, (1) a court must decide whether the underlying derivative claims were viable; (2)

the derivative claim recovery as pled must be material in relation to the merger consideration, and (3) the court should assess whether the complaint alleges that the acquirer would not assert the underlying derivative claim and did not provide value for it.

12 Cases that cite this headnote

[16] **Pretrial Procedure** ➔ Parties, Defects as to Pretrial Procedure ➔ Construction of pleadings

When assessing standing at the motion to dismiss stage of the proceedings, a court must accept the plaintiff's factual allegations as true and draw all reasonable inferences in his favor; this does not mean that the court is bound by unreasonable, unsupported, or speculative derivative suit damages claims, but if it is reasonably conceivable that the plaintiff could recover the damages claimed in the complaint, the court must accept that allegation as true for purposes of the motion to dismiss for lack of standing.

[17] **Corporations and Business Organizations** ➔ Fairness of transaction

If the plaintiff has alleged a viable derivative claim, where it is reasonably conceivable that the claim is material when compared to the merger consideration and could result in the damages pled in the complaint challenging the merger on fairness grounds, the plaintiff has satisfied the materiality requirement at the motion to dismiss stage for standing purposes; a percentage-based risk reduction should not be applied at the pleading stage of the proceedings.

2 Cases that cite this headnote

[18] **Action** ➔ Persons entitled to sue

Standing is concerned only with the question of who is entitled to mount a legal challenge and not with the merits of the subject matter in controversy.

1 Case that cites this headnote

\*124 Court Below – Court of Chancery of the State of Delaware, Consolidated C.A. No. 2019-0097

Upon appeal from the Court of Chancery. **REVERSED** and **REMANDED**.

#### Attorneys and Law Firms

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Before SEITZ, Chief Justice; VALIHURA, VAUGHN, TRAYNOR, and MONTGOMERY-REEVES, Justices, constituting the Court en Banc.

#### Opinion

SEITZ, Chief Justice:

[1] With limited exceptions, a merger extinguishes an equity owner's standing to pursue a derivative claim against the target entity's directors or controller. But the same plaintiff has standing to pursue a post-closing suit if they challenge the validity of the merger itself as unfair because the controller failed to secure the value of a material asset—like derivative claims that pass to the acquirer in the merger. Given the difficulties of pursuing such claims, not the least of which is proof that the equity owner received an unfair merger price for their ownership interest, the plaintiff might not prevail on the merits, but they have sufficiently alleged a direct claim to survive a motion to dismiss for lack of standing.

After a \$3.3 billion “roll up” of minority-held units involving a merger between Enbridge, Inc. (“Enbridge”) and Spectra Energy Partners L.P. (“SEP”), Paul Morris, a former SEP minority unitholder, lost standing to litigate an alleged \$661 million derivative suit on behalf of SEP against its general partner, Spectra Energy Partners (DE) GP, LP (“SEP GP”). Morris reprised the derivative claim dismissal by filing a new class action complaint that alleged the Enbridge/SEP merger exchange ratio was unfair because SEP GP agreed to a merger \*125 that did not reflect the material value of his derivative claims.

The Court of Chancery granted SEP GP's motion to dismiss the new complaint for lack of standing. The court held that, to have standing to bring a post-merger claim, Morris had to allege a viable and material derivative claim that the buyer would not assert and provided no value for in the merger. Focusing on the materiality requirement, the court first discounted the \$661 million recovery to \$112 million to reflect the public unitholders' beneficial interest in the derivative litigation recovery. Then, the court discounted the \$112 million further to \$28 million to reflect what the court estimated was a one in four chance of success in the litigation. After the discounting, the \$28 million—less than 1% of the merger consideration—was immaterial to a \$3.3 billion merger.

On appeal, Morris argues that the court should not have dismissed the plaintiff's direct claims for lack of standing. We agree with Morris and find that, on a motion to dismiss for lack of standing, he has sufficiently pled a direct claim attacking the fairness of the merger itself for SEP GP's failure to secure value for his pending derivative claims. Thus, we reverse the Court of Chancery's judgment and remand for further proceedings.

#### I.

The plaintiff, Paul Morris, owned common units of SEP, a master limited partnership that traded on the New York Stock Exchange.<sup>1</sup> Enbridge owned 83% of SEP's outstanding units through a series of wholly-owned subsidiaries, including SEP GP.<sup>2</sup> Spectra Energy Corp (“SE Corp”) was Enbridge's predecessor-in-interest.

Prior to selling to Enbridge, SE Corp agreed to a 50-50 joint venture with Phillips 66 whereby Phillips would contribute

\$1.5 billion and SE Corp would contribute a one-third interest in two long haul natural gas pipelines, implying a \$1.5 billion valuation of the contributed assets. Because SEP owned the assets, the parties proposed a “reverse dropdown” to sell the assets from SEP to SE Corp. To purchase the assets from SEP, SE Corp offered to “(i) surrender 20 million SEP limited partner units to SEP for redemption ... and (ii) waive its right to receive up to \$4 million in incentive distribution rights [ ] for twelve consecutive quarters ...”<sup>3</sup> SEP GP authorized a conflicts committee to evaluate the reverse dropdown.

SEP's limited partnership agreement required the general partner's conflicts committee to act in “subjective good faith.”<sup>4</sup> According to the complaint's allegations, a financial advisor identified three ways the transaction would provide value to SEP: the redeemed units, the waived distribution rights, and other reduced cash flow due to the loss of assets. Later, however, the adviser included only the first two components as consideration—valued at \$946 million—and issued a fairness opinion. The conflicts committee recommended approval, and SEP GP's board approved the reverse dropdown.

After reviewing SEP's books and records, the plaintiff filed a class action derivative **\*126** complaint on behalf of all owners of SEP public units against SEP GP and SE Corp. The complaint alleged that SEP only received \$946 million in the reverse dropdown when SE Corp valued the assets at \$1.5 billion. Morris pleaded three derivative claims, including a claim for breach of the limited partnership agreement's “good faith” obligation in approving the reverse dropdown.<sup>5</sup> The court dismissed two of the claims for failure to state a claim, but declined to dismiss the breach of the “good faith” obligation claim. The court found, after drawing all reasonable inferences in Morris's favor, that the complaint “made adequate allegations showing that under reasonably conceivable circumstances a facially unreasonable gap in consideration exists sufficient to infer subjective bad faith.”<sup>6</sup> According to the court, “it was ‘reasonably conceivable that the General Partner acted in subjective bad faith.’”<sup>7</sup> The parties conducted discovery and SEP GP moved for summary judgment. During the litigation, and with the motion summary judgment pending, Enbridge acquired SE Corp in a stock-for-stock merger, becoming SEP GP's ultimate parent and controller of SEP.

In March 2018, SEP's stock price declined by twenty percent in reaction to announcements from the Federal Energy

Regulatory Commission (“FERC”). SEP recognized in its filings with the U.S. Securities and Exchange Commission that “[t]he change in FERC's policy has had a negative impact on the MLP sector” and that SEP “would attempt to mitigate the impact of the policy change.”<sup>8</sup> In May, Enbridge offered a stock-for-stock exchange to buyout SEP's public unitholders. SEP's public unitholders would receive 1.0123 common shares of Enbridge in exchange for each publicly held common unit of SEP based on the SEP common units' and Enbridge common shares' closing price on the NYSE as of May 16, 2018. SEP closed at a unit price of \$33.10 and Enbridge common shares closed at \$32.70. According to the plaintiff, this was an opportunistic offer to squeeze out the public unitholders due to an artificially depressed trading price. Another three-member SEP GP conflicts committee went to work, two of whom were on the committee that reviewed the reverse dropdown transaction.

Morris's counsel sent a letter to the conflicts committee and told them that the derivative claim was worth more than \$500 million and must be taken into account when negotiating the merger exchange ratio. Counsel also noted that the proposed offer was “woefully inadequate” and “fail[ed] to provide SEP and its public unitholders with any value associated with” the derivative claim.<sup>9</sup> After Morris's counsel met with the conflicts committee's legal and financial advisors, the conflicts committee ultimately determined that the value of the derivative claim, net of defense costs, “was less than \$0.”<sup>10</sup> The conflicts **\*127** committee also found the value of the reverse dropdown to SEP to be about \$1.5 billion after adding back the reduced distributions its advisor previously excluded.

As the parties negotiated the buyout, the conflicts committee decided to give no value to the derivative claim but attributed \$4 million in saved litigation costs. They also agreed to an exchange ratio “whereby Enbridge would acquire all publicly held SEP units at an exchange ratio of 1.111 shares of Enbridge stock for each publicly held unit of SEP.”<sup>11</sup> On August 24, 2018, SEP announced a definitive merger agreement with Enbridge and its wholly-owned subsidiaries where Enbridge would acquire all publicly held SEP units at an exchange ratio of 1.111 shares of Enbridge stock for each publicly held unit of SEP. The transaction was not subject to approval by a majority of the minority unitholders. The transaction was approved on December 13, 2018. At that time, Enbridge affiliates held about 83% of the outstanding units. About 39% of publicly held units voted in favor of

the transaction. After the deal closed, the court dismissed the derivative claim by stipulation of the parties.<sup>12</sup>

After another books and records request, Morris filed this class action on February 8, 2019 against SEP GP, as SEP's general partner, for breaching SEP's limited partnership agreement and the implied covenant of good faith and fair dealing. Morris claimed that the conflicts committee and SEP GP's board of directors failed to attribute appropriate value to the pre-merger derivative claim or secure any value for the claim. SEP GP moved to dismiss for lack of standing and failure to state a claim.

[2] The Court of Chancery dismissed Morris's complaint for lack of standing without reaching the arguments for failure to state a claim. The court applied the three-part test from its decision in *In re Primedia, Inc. Shareholders Litigation*.<sup>13</sup> The *Primedia* test applies to claims challenging a merger because the equity owners are not being fairly compensated for the value of material derivative claims. To establish standing the plaintiff must allege a viable derivative claim, that is material to the overall transaction, and will not be pursued by the buyer and is not reflected in the merger consideration.<sup>14</sup>

The court found Morris's derivative claim viable because it had already survived a motion to dismiss.<sup>15</sup> Also, the parties did not dispute that SEP's public unitholders received no value for the derivative claim, Enbridge did not intend to pursue the derivative claims post-merger, and Morris pled damages of \$661 million. But the court dismissed Morris's two direct claims. First, the court discounted the \$661 potential recovery to \$112 million to reflect the public unitholders' proportionate share of the litigation recovery. And second, the court discounted the \$112 million further to about \$28 million to reflect a one-in-four chance of prevailing in the litigation. Finally, the court compared the \$28 million to the \$3.3 billion merger transaction and found it immaterial. Thus, the court granted SEP GP's motion to dismiss for lack of standing without reaching SEP GP's alternative \*128 argument that Morris failed to state a claim for relief.

## II.

On appeal the parties have focused their attention on the Court of Chancery's application of its *Primedia* decision

to assess standing. To reiterate, under *Primedia's* three-part test, which applies to claims alleging an unfair merger because the price does not reflect the value of derivative claims, the plaintiff must allege a viable derivative claim assessed by a motion to dismiss standard.<sup>16</sup> The plaintiff must also allege that the derivative claim was material to the overall merger transaction, will not be pursued by the buyer, and is not reflected in the merger consideration.<sup>17</sup>

According to Morris, the Court of Chancery should not have dismissed his complaint for lack of standing because he pled in detail a direct claim that satisfied the *Primedia* factors. The parties and the court agreed that the derivative claim was viable because it had survived a motion to dismiss. They also agreed that Enbridge would not assert the claim and provided no value for the claim in the exchange ratio. And, as Morris alleged, the \$112 million potential recovery was material to the \$3.3 billion transaction. According to Morris, if the Court of Chancery had accepted his well-pleaded factual allegations as true and drawn all reasonable inferences in his favor, it would not have discounted the potential value of the claim such that it became immaterial to the merger value.

The defendants counter that Morris supposedly did not challenge the fairness of the exchange ratio, undermining the claim that SEP GP did not negotiate fair consideration for the public unitholders' SEP units. For the litigation discount issue, the defendants contend that Morris conceded in the Court of Chancery that the derivative claim should be discounted for litigation risk. The defendants also argue that discounting for litigation risk is consistent with prior cases.<sup>18</sup> And, according to the defendants, the "fraud exception to the continuous ownership rule" is the proper method to assess the plaintiff's standing to assert post-merger claims.<sup>19</sup>

[3] We review *de novo* the Court of Chancery's finding that the plaintiff lacked standing to pursue his post-merger claims challenging the fairness of the merger consideration for failure to recoup some or all of the value of the derivative claims.<sup>20</sup>

## A.

[4] [5] [6] The Court of Chancery dismissed Morris's complaint for lack of standing. Standing "refers to the right of a party to invoke the jurisdiction of a court to enforce a

claim or redress a grievance.”<sup>21</sup> Standing \*129 is required to “ensure that the litigation before the tribunal is a ‘case or controversy’ that is appropriate for the exercise of the court’s judicial powers.”<sup>22</sup> It allows Delaware courts, “as a matter of self-restraint,” to “avoid the rendering of advisory opinions at the behest of parties who are mere intermeddlers.”<sup>23</sup> “[S]tanding is properly a threshold question that the Court may not avoid.”<sup>24</sup>

[7] The standing inquiry “has assumed special significance in the area of corporate law.”<sup>25</sup> Classifying a claim as either direct or derivative bears directly on standing and is in many ways outcome-determinative in post-merger litigation.<sup>26</sup> If a plaintiff alleges a direct claim, it means that the equity owner has alleged that they have suffered the injury, and will receive the benefit of any recovery.<sup>27</sup> Thus, at least at the pleading stage, the plaintiff has met the injury-in-fact requirement and properly invoked the court’s jurisdiction to redress an injury.

[8] [9] In contrast, for a derivative action, the equity owner acts in a representative capacity on behalf of an entity. In that representative capacity, the plaintiff steps into the shoes of the entity and asserts the injury on its behalf.<sup>28</sup> If the equity holder has successfully jumped over 8 *Del. C.* § 327 of the Delaware General Corporation Law, Court of Chancery Rule 23.1, and our decisional law hurdles, standing exists to pursue a derivative claim on behalf of the entity.<sup>29</sup> But, under *Lewis v. Anderson*,<sup>30</sup> the equity owner no longer has standing to pursue derivative claims post-merger except in two instances—when the merger itself is the subject to a fraud claim, perpetrated to deprive shareholders of their standing to bring or maintain a derivative action; and when the merger is essentially a reorganization that does not affect the equity owner’s relative ownership in the post-merger enterprise.<sup>31</sup>

The Supreme Court and the Court of Chancery are frequently called upon to \*130 draw the dividing line between direct and derivative claims following a merger. Our recent decision in *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*<sup>32</sup> is particularly relevant here, as it addressed standing following a merger in the context of a master limited partnership. In *El Paso*, the plaintiff filed derivative claims on behalf of the limited partnership against the general partner claiming that the limited partnership substantially overpaid for the assets in a transaction. While the derivative suits were pending, the limited partnership was acquired in a merger. Although

the Court of Chancery recognized that a merger typically results in the plaintiff losing standing to pursue pending derivative claims, it characterized the plaintiff’s claims as both direct and derivative, circumventing the post-merger standing impediment. The court also held that, even if the plaintiff’s claims were purely derivative, they survived the merger because dismissal would leave the minority equity owners without a remedy for the general partner’s unfair dealing.

On appeal, this Court reversed. First, we noted that standing in corporate cases is a threshold inquiry because it implicates the exercise of the court’s jurisdiction.<sup>33</sup> We observed that derivative standing is a “creature of equity” that allows a court of equity to hear claims by equity owners “to prevent a complete failure of justice on behalf of the corporation.”<sup>34</sup> We also viewed standing as a fluid concept, that can change as a result of “a myriad of subsequent legal or factual causes that occur while the litigation is in progress” such as the loss of the plaintiff’s status as an equity holder.<sup>35</sup> If standing is lost, “the court lacks the power to adjudicate the matter, and the action will be dismissed as moot unless an exception applies.”<sup>36</sup>

Second, we held that the plaintiff brought his claims as derivative claims, and his claims remained derivative claims throughout the litigation. Even though the plaintiff’s derivative claims involved a limited partnership, where most rights are governed by agreement rather than fiduciary duties, our Court held that *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*,<sup>37</sup> and its two-part test for drawing a line between direct and derivative claims, applied.<sup>38</sup> Under *Tooley*, the court must answer \*131 two questions: “[w]ho suffered the alleged harm—the corporation or the suing stockholder individually,” and “who would receive the benefit of the recovery or other remedy?”<sup>39</sup> In *El Paso*, we found under *Tooley* that the limited partnership suffered the harm and would benefit from any recovery. Thus, the plaintiff’s claims were purely derivative, and under *Lewis v. Anderson* the derivative claims passed to the buyer following the merger. The plaintiff no longer had standing to pursue the derivative claims.

Finally, and directly relevant to this appeal, we recognized in *El Paso* that, even though the plaintiff lost standing to pursue derivative claims post-merger, a narrow avenue of relief was still available to the plaintiff—a direct claim challenging the

validity of the merger when the general partner failed to secure the value of material derivative claims in the merger for the minority equity owners:

Under our law, equity holders confronted by a merger in which derivative claims will pass to the buyer have the right to challenge the merger itself as a breach of the duties they are owed. In many cases, it might be difficult to allege that the value they are receiving in the merger is unfair simply as a result of the failure to consider value associated with their derivative suit. But that reality may also suggest that, even according full value to the potential recovery in the derivative suit (rarely a guarantee), the plaintiffs still received fair value in the merger. ... The derivative plaintiff's recourse was to file a money damages challenge to the merger and prove that the failure to accord value to the limited partnership in the merger was somehow violative of his rights.<sup>40</sup>

In reaching this conclusion, we relied on our decision in *Parnes v. Bally Entertainment Corp.*<sup>41</sup> In *Parnes*, the plaintiff alleged that in negotiations between Bally Entertainment Corp. and Hilton Hotels Corp., the CEO's actions—requiring a bribe of “several substantial cash payments and asset transfers” before consenting to a merger—resulted in the stockholders receiving an unfair price.<sup>42</sup> After the merger closed, the Court of Chancery found the claim derivative and dismissed the complaint for lack of standing. We reversed, finding that the complaint “directly challenges the fairness of the process and the price in the Bally/Hilton merger.”<sup>43</sup>

We distinguished the direct claim attacking the merger itself from the derivative claim in *Kramer v. Western Pacific Industries*.<sup>44</sup> In *Kramer*, the plaintiff alleged “wrongful transactions associated with the merger (such as the award of golden parachutes) [that] reduced the

amount paid to [the target's] stockholders,” but “did not allege that the merger \*132 price was unfair or that the merger was obtained through unfair dealing.”<sup>45</sup> Our Court held that the complaint stated only a derivative claim for mismanagement.<sup>46</sup> Although the plaintiff alleged that wrongful transactions associated with the merger reduced the amount paid to the target's stockholders, “it did not allege that the merger price was unfair or that the merger was obtained through unfair dealing.”<sup>47</sup> That “such a claim is asserted in the context of a merger does not change its fundamental nature.”<sup>48</sup>

[10] Thus, in *Kramer* what the plaintiff failed to plead was a challenge to the merger itself rather than attack the side benefits secured by some merger participants. After *Parnes*, “to state a direct claim with respect to a merger, a stockholder must challenge the validity of the merger itself, usually by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price.”<sup>49</sup> Finally, in *Parnes* we separated the standing inquiry from whether the complaint states a claim for relief.<sup>50</sup> After reversing the court on standing, we also reversed the court's conclusion that the complaint failed to state a claim under Rule 12(b)(6) because the complaint alleged sufficient facts of unfairness to overcome business judgment rule review.<sup>51</sup>

## B.

As noted in *Parnes*, “it is often difficult to determine whether a stockholder is challenging the merger itself, or alleged wrongs associated with the merger ....”<sup>52</sup> After *Parnes*, the Court of Chancery was left to fill in the details. It was not an easy assignment. In *Golaine v. Edwards*,<sup>53</sup> the plaintiff challenged a \$20 million payment to Kohlberg Kravis Roberts & Co., L.P. (“KKR”) made in connection with a merger between The Gillette Company and Duracell International, Inc. KKR's affiliate, KKR Associates, L.P., owned 34% of Duracell's outstanding common stock. The defendants filed a motion to dismiss and claimed that Golaine's challenge to the \$20 million payment was a derivative rather than direct claim because the plaintiff failed to allege that the merger terms were tainted by the \$20 million fee. In granting the defendants' motion to dismiss,

the court concluded that the fee did not taint the merger negotiation process or the merger terms. Thus, the transaction was not unfair to Duracell's non-KKR stockholders, and the plaintiff failed to state an individual claim. It also held that the complaint failed to plead facts rebutting the business judgment rule's presumptive applicability to the Duracell board's decision to award KKR the fees or plead facts to support a waste claim.

\*133 In applying *Parnes*, the court in *Golaine* focused less on standing and more on the merits of a post-merger direct claim, and remarked about how the two inquiries overlap at times:

the derivative-individual distinction as articulated in *Parnes* is revealed as primarily a way of judging whether a plaintiff has stated a claim on the merits. ... *Parnes* can be straightforwardly read as stating the following basic proposition: a target company stockholder cannot state a claim for breach of fiduciary duty in the merger context unless he adequately pleads that the merger terms were tainted by unfair dealing. If the plaintiff cannot meet that pleading standard, then he has simply not stated a claim under Rule 12(b)(6). This merits focus of *Parnes* is, in my view, a more candid approach that places primary emphasis on whether compensable injury to the target stockholders is alleged rather than on whether the target stockholder's complaint has articulated only a waste or mismanagement claim for which there is likely no proper plaintiff on earth.<sup>54</sup>

In *In re Massey Energy Co. Derivative & Class Action Litigation*,<sup>55</sup> stockholders of a coal mining corporation filed derivative suits against the board and company officers

for lack of oversight and to hold them responsible for the financial harm from a tragic mine disaster. While the derivative suits progressed, Massey's board entered into a merger agreement with another mining company. The plaintiffs sought a preliminary injunction to prevent the merger from closing, claiming that the Massey Board should have negotiated to have the derivative claims transferred into a litigation trust for the benefit of Massey stockholders. According to the plaintiffs, the merger was unfair because it allowed the buyer to acquire Massey without paying fair value for the value of the derivative claims.

While the merger had not yet closed and the court viewed the case through a preliminary injunction lens, the court had to grapple with the value of derivative claims and the loss of standing to pursue them once the merger closed.<sup>56</sup>

First, the court found the *Caremark*<sup>57</sup> claims against the defendants viable. Second, and fatal to the plaintiffs' preliminary injunction claim, the court found that a best-case successful recovery of \$95 million was immaterial to an \$8.5 billion merger. Thus, given the relative immateriality of the derivative claims, the court was not persuaded on a preliminary injunction record that the merger would likely be found to be economically unfair to the Massey stockholders for failing to capture the value of the derivative claims. Importantly, the court did not couch its ruling on standing grounds. Instead, \*134 the court found that the plaintiff had failed to demonstrate a likelihood of success on the merits to earn a preliminary injunction enjoining the merger.

[11] After *Golaine* and *Massey*, the Court of Chancery in *Primedia* gathered the strands of these and other post-*Parnes* cases and knitted them together into a three-part test. In *Primedia*, the plaintiffs filed a derivative action on Primedia Inc.'s behalf and alleged that KKR traded on inside information in a 2002 preferred stock purchase. They sought disgorgement of KKR's profits under *Brophy v. Cities Service Co.*<sup>58</sup> While they litigated the derivative case, Primedia, Inc. merged with a private equity entity. The plaintiffs then filed a class action suit and alleged that the merger terms were unfair because the Primedia directors failed to obtain any value for the *Brophy* claim. They also argued that the merger conferred a special benefit on KKR because KKR knew any acquirer was unlikely to pursue the *Brophy* claim post-merger. The special benefit, according

to the plaintiffs, required court review of the merger under entire fairness.

Recognizing that the post-merger class action complaint required application of the *Parnes* decision, on a motion to dismiss the Court of Chancery read *Parnes* to require first an inquiry into standing, and second, an evaluation of the merits of the claims.<sup>59</sup> Drawing from the court's *Golaine* and *Massey* decisions, the court distilled the standing inquiry into a three-part test:

A plaintiff claiming standing to challenge a merger directly under *Parnes* because of a board's alleged failure to obtain value for an underlying derivative claim must meet a three part test. First, the plaintiff must plead an underlying derivative claim that has survived a motion to dismiss or otherwise could state a claim on which relief could be granted. Second, the value of the derivative claim must be material in the context of the merger. Third, the complaint challenging the merger must support a pleadings-stage inference that the acquirer would not assert the underlying derivative claim and did not provide value for it.<sup>60</sup>

The Court of Chancery found the *Brophy* derivative claim viable because it **\*135** would survive a motion to dismiss. For the materiality requirement, the court found potential recoverable damages of \$190 million plus substantial prejudgment interest, which was material when compared to the \$330 million merger. The court also noted that the amounts were material even if discounted to reflect the minority stockholders' beneficial interest in the litigation recovery. Primedia's minority stockholders owned 42% of its outstanding stock. Their *pro rata* share of the merger consideration was \$133 million. Their *pro rata* share of a \$190 million recovery on the *Brophy* claim would be \$80 million.

In a parting comment illustrating the materiality of the derivative claims, the court risk-adjusted the potential recovery and found it material in relation to the proceeds the minority would receive in the merger:

Clearly there is risk in the litigation, and to succeed, plaintiffs will have to prove materiality and *scienter*. These challenges, however, are not similar to those that led Chancellor Strine in *Massey Energy* to discount so heavily the value of the derivative claims. If I assume prevailing on the *Brophy* claim was a toss-up, or even a 1-in-5 proposition, the risk-adjusted, pre-interest recoveries for the minority of \$40 million and \$16 million, respectively, remain material when compared to their \$133 million share of the proceeds from the Merger.<sup>61</sup>

After finding that the derivative claims were viable and material, the court also found that the acquirer would not assert the *Brophy* claim post-merger and provided no value for it in the merger consideration. Turning to whether the plaintiffs stated a claim for relief, the court held that it was reasonably conceivable that KKR received a special benefit in the merger because no acquirer likely would have pursued the *Brophy* claim post-merger, and the defendants did not extract value for or take steps to preserve the *Brophy* claim. Thus, the entire fairness standard of review applied to the merger, and the plaintiffs alleged sufficient grounds that the merger was not entirely fair.<sup>62</sup>

C.

[12] [13] In this appeal the procedural issues do not warrant lengthy discussion. After a review of the record, we are satisfied that Morris preserved for appeal a challenge to the fairness of the merger itself, and SEP GP disputed how the court should consider litigation risk when assessing materiality. Morris alleged that former public unitholders

were harmed because “SEP GP has allowed Enbridge to engineer the Roll-Up Transaction on terms that were patently unfair and unreasonable to SEP and its public unitholders, and that could not have been approved in good faith by the New Conflicts Committee or the SEP GP Board.”<sup>63</sup> Specifically, Morris pled that “the New Conflicts Committee and the SEP GP Board utterly failed to attempt to (i) appropriately value the Derivative Claim, or (ii) secure any value for the Derivative Claim in its negotiations concerning the Roll-Up Transaction.”<sup>64</sup> SEP GP also argued that Morris's chance \*136 of prevailing on the derivative claims was a “toss-up” or a “one-in-five” chance, essentially copying the odds from the *Primedia* decision.<sup>65</sup> Thus, the parties preserved their appellate arguments about materiality.

[14] The main issue on appeal is whether the Court of Chancery stayed true to the standard of review on a motion to dismiss for lack of standing. In other words, did the court accept as true all reasonable factual allegations in the complaint and consider whether it was reasonably conceivable that Morris asserted a direct claim that could lead to a \$661 million recovery on the derivative claims? After our review of the complaint, we find that the court strayed from the proper standard of review, and Morris had standing to pursue his post-merger complaint.

As discussed earlier, to have standing, the plaintiff must plead a direct claim. Under *Parnes*, to plead a direct claim, the plaintiff must allege that the merger itself was unfair, “by charging the directors with breaches of fiduciary duty resulting in unfair dealing and/or unfair price.”<sup>66</sup> When the court is faced with a post-merger claim challenging the fairness of a merger based on the defendant's failure to secure value for derivative claims, we think that the *Primedia* framework provides a reasonable basis to conduct a pleadings-based analysis to evaluate standing on a motion to dismiss.

[15] First, the court must decide whether the underlying derivative claims were viable, meaning they would survive a motion to dismiss. Meritless derivative claims would have no impact on the merger price. Second, the derivative claim recovery as pled must be material in relation to the merger consideration. An immaterial derivative claim would have little or no impact on the merger price. For example, a \$10 million derivative claim could not reasonably be expected to be material to a \$1 billion merger value. The same derivative

claim would be material to a \$20 million merger. And finally, the court should also assess whether the complaint alleges that the acquirer would not assert the underlying derivative claim and did not provide value for it.<sup>67</sup>

[16] When assessing standing at the motion to dismiss stage of the proceedings, the court must accept the plaintiff's factual allegations as true and draw all reasonable inferences in his favor. This does not mean that the court is bound by unreasonable, unsupported, or speculative derivative suit damages claims. But if it is reasonably conceivable that the plaintiff could recover the damages claimed in the complaint, the court must accept that allegation as true for purposes of the motion to dismiss for lack of standing.

Here, the parties do not dispute the viability of the derivative claim. Morris's derivative claim survived a motion to dismiss.

\*137 The parties also did not dispute that SEP GP secured no value for the derivative claim, and Enbridge would not assert the claim post-merger. Regarding materiality, Morris alleged that his derivative claim could lead to a more than \$660 million damages award, including prejudgment interest, which was material when compared to a \$3.3 billion merger.<sup>68</sup> The court could reasonably infer that if Morris prevailed on his challenge to the reverse dropdown transaction, Morris could recover at least \$660 million.

The court, however, discounted the potential \$660 million recovery to \$112 million to reflect the minority unitholders' 17% beneficial interest in the derivative litigation recovery. The Court of Chancery then reduced the \$112 million further to account for litigation risk because it was still “a litigable question whether Reduced GP Cash Flow represented value to the Partnership in the Reverse Dropdown, which would vindicate the Defendant's approval of the transaction objectively.”<sup>69</sup> The court also held that even if SEP GP's valuation was incorrect, it would not breach the limited partnership agreement because Morris would still have to prove “the work of the Defendant's advisor, Simmons, on the Reverse Dropdown did not fit in the parameters of Section 7.10(b) of the Second A & R LPA.”<sup>70</sup> The court observed that Morris would have to demonstrate that “SEP GP did not ‘reasonably believe’ that the valuation of the transaction was within Simmons' competence, negating any ‘safe harbor’ for the Defendant.”<sup>71</sup> Finally, Morris would also “have to demonstrate the Defendant's subjective bad faith to recover damages on behalf of SEP ....”<sup>72</sup> Taking these difficulties into account, the court concluded:

I find that the chance of success of the Derivative Claim was slim, and certainly less than one-in-four. Twenty-five percent of \$112,370,000 is \$28,092,500. This represents less than one percent of the total value of the Roll-Up. One percent is not material in the context of the Roll-Up. The Plaintiff consequently does not have standing to pursue his claims.<sup>73</sup>

We see two errors in the court's materiality analysis at the motion to dismiss stage of the proceedings. First, as discussed earlier, the court must accept Morris's factual allegations as true and draw all reasonable inferences in his favor.<sup>74</sup> In its prior decision the court found that Morris's complaint "made adequate allegations showing that under reasonably conceivable circumstances a facially unreasonable gap in consideration exists sufficient to infer subjective bad faith."<sup>75</sup> Thus, "it was 'reasonably conceivable that the General Partner acted in subjective bad faith.'"<sup>76</sup> It was \*138 also reasonably conceivable that, had Morris succeeded in the derivative suit challenging the reverse drop down transaction, the recovery could have been at least \$660 million. Applying a further litigation risk discount at the pleading stage was inconsistent with the court's standard of review on a motion to dismiss for lack of standing.

Second, even if it was proper to discount the \$660 million in damages alleged in the complaint to reflect the public unitholders' interest in the derivative recovery, to maintain equivalence, the court should have compared the \$112 million *pro rata* interest in the derivative claim recovery to the public unitholders' proportional interest in the merger consideration. The public unitholders had a 17% interest in SEP. The merger consideration was valued at \$3.3 billion. An apples-to-apples comparison would have compared \$112 million to \$561 million.<sup>77</sup> Under this calculation, the derivative claim was material at the motion to dismiss stage.

Neither *Massey* nor *Primedia* require a different result. As discussed earlier, in *Massey* the plaintiffs alleged in

their complaint *Caremark* damages equal to the damages that the company suffered from the mining disaster—estimated to be \$900 million to \$1.4 billion. Even though the plaintiffs pled a viable *Caremark* claim, the court refused to equate the value of the *Caremark* claim with the damages suffered from the mine explosion. Unlike here, where Morris is entitled to certain presumptions in his favor, the court made its assessment as part of a preliminary injunction motion, where likelihood of success is one of the requirements. The court properly took into consideration the substantive difficulties confronting the plaintiff in proving and collecting on their *Caremark* claims. On an extensive record before the court, it predicted that the best-case recovery was \$95 million, based not on the full damages caused the company by the mine disaster but on the policy limits for directors' and officers' insurance coverage. The plaintiff did not show a likelihood that it would succeed on its challenge to the fairness of the merger for failing to secure value for a \$95 million derivative claim recovery as part of a \$8.5 billion merger.<sup>78</sup> Importantly, the court did not apply a percentage reduction based on litigation risk. Instead, on a substantial record, the court gave the plaintiffs the benefit of their realistic, best-case recovery.

*Primedia* is also distinguishable. The court in *Primedia* found that the plaintiffs' *Brophy* claim was material and did not face the same impediments to recovery as the plaintiffs faced in *Massey*. It was only after the court found that the plaintiffs had a strong and material derivative case that the court concluded its analysis with what can be best characterized as confirmation of its materiality conclusion.

The court stated that even if the *Brophy* claim "was a toss-up, or even a 1-in-5 proposition, the risk-adjusted, pre-interest recoveries for the minority of \$40 million and \$16 million, respectively, remain material when compared to their \$133 million share of the proceeds from the Merger."<sup>79</sup> As we interpret the court's percentage risk adjustment, \*139 it served only as a hypothetical to illustrate the strength and materiality of the plaintiffs' claims even if there were obstacles to recovery.

[17] In any event, on a motion to dismiss for lack of standing, we are not addressing the likelihood of success on a preliminary injunction record. A percentage-based risk reduction should not be applied at this stage of the proceedings. If the plaintiff has alleged a viable derivative

claim, where it is reasonably conceivable that the claim is material when compared to the merger consideration and could result in the damages pled in the complaint, the plaintiff has satisfied the materiality requirement at the motion to dismiss stage for standing purposes. Morris has met this standard and his claims should not be dismissed for lack of standing.

### III.

[18] Standing is concerned “only with the question of *who* is entitled to mount a legal challenge and not with the merits of the subject matter in controversy.”<sup>80</sup> If the court finds that the plaintiff has standing, on the defendant's motion the court should also consider a motion to dismiss for failure to state

a claim. For the first time on appeal, SEP GP has asked us to consider its motion to dismiss for failure to state a claim. Because the record is complex and it is not clear what has been incorporated by reference, we think that the Court of Chancery should consider the motion first. It also might be a better use of the court's scarce resources to consider a motion for summary judgment, after the completion of discovery, rather than a motion to dismiss. But we leave it to the Court of Chancery's discretion. We reverse the Court of Chancery's judgment and remand for further proceedings. Jurisdiction is not retained.

#### All Citations

246 A.3d 121

### Footnotes

- 1 We take the facts from the complaint and the Court of Chancery's decision.  *Morris v. Spectra Energy Partners (DE) GP, LP*, 2019 WL 4751521 (Del. Ch. Sept. 30, 2019).
- 2 Enbridge owned Spectra Energy Partners GP, LLC, which owned SEP GP.
- 3  *Morris*, 2019 WL 4751521, at \*3.
- 4  *Id.* A “good faith” finding requires that “the person acting ‘must believe that the determination or other action is in the best interests of the Partnership.’ ”  *Id.* (citation omitted).
- 5 The plaintiff also pled breach of the implied covenant of good faith and fair dealing against SEP GP and tortious interference with the limited partnership agreement against SEP Corp.
- 6  *Morris*, 2019 WL 4751521, at \*5 (quoting *Morris v. Spectra Energy Partners (DE) GP, LP*, 2017 WL 2774559, at \*16 (Del. Ch. June 27, 2017)).
- 7  *Id.*
- 8  *Id.* at \*6 (alteration in original). Later, however, and “contrary to initial expectations,” “it did not ‘meaningfully limit an MLP's ability to recover an income tax allowance in its cost of service.’ ”  *Id.* at \*7. (quoting Compl. ¶ 57). “SEP's public units realized a corresponding increase in market price.”  *Id.*
- 9  *Id.* at \*6 (quoting the record).

10  *Id.* at \*8.

11  *Id.* at \*9 (citation omitted).

12 The Order dismissing the derivative claim “did not preclude the Plaintiff from prosecuting this Action.”  *Id.*  
at \*9.

13  67 A.3d 455 (Del. Ch. 2013).

14  *Morris*, 2019 WL 4751521, at \*11.

15  *Id.* at \*12 (“ *Primedia* asks whether the claim has ‘survived a motion to dismiss.’ The answer for the  
Derivative Claim is in the affirmative. That is the end of the viability inquiry.”).

16  *Primedia*, 67 A.3d at 477 (“First, the plaintiff must plead an underlying derivative claim that has survived  
a motion to dismiss or otherwise could state a claim on which relief could be granted.”).

17  *Id.*

18 As they argue, “the legal principle of whether a court should adjust for risk when valuing a derivative claim  
does not turn on the nature and degree of that risk. It is either appropriate to risk adjust or it is not.” Answering  
Br. at 32. And they assert Delaware law supports their position in other contexts. *Id.* at 32–33 (citing  *ONTI*,  
*Inc. v. Integra Bank*, 751 A.2d 904 (Del. Ch. 1999);  *Bomarko, Inc. v. Int’l Telecharge, Inc.*, 794 A.2d 1161  
(Del. Ch. 1999), *aff’d*, 766 A.2d 437 (Del. 2000)).

19 Answering Br. at 35.

20  *El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248, 1256 (Del. 2016).

21  *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991) (citation omitted).

22  *Dover Historical Soc’y v. City of Dover Planning Comm’n*, 838 A.2d 1103, 1110 (Del. 2003).

23  *Ala. By-Prods. Corp. v. Cede & Co. on Behalf of Shearson Lehman Bros., Inc.*, 657 A.2d 254, 264 (Del.  
1995) (quoting  *Stuart Kingston*, 596 A.2d at 1382).

24  *Gerber v. EPE Hldgs. LLC*, 2013 WL 209658, at \*12 (Del. Ch. Jan. 18, 2013) (“If there is no standing,  
there is no justiciable substantive controversy.”).

25  *Ala. By-Prods.*, 657 A.2d at 264.

26 See  *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1036 (Del. 2004) (“The decision whether  
a suit is direct or derivative may be outcome-determinative.”).

- 27  *Parnes v. Bally Entm't Corp.*, 722 A.2d 1243, 1245 (Del. 1999) (“Stockholders may sue on their own behalf (and, in appropriate circumstances, as representatives of a class of stockholders) to seek relief for direct injuries that are independent of any injury to the corporation.”).
- 28  *Id.* (“A derivative claim is one that is brought by a stockholder, on behalf of the corporation, to recover for harms done to the corporation.”).
- 29  *Ala. By-Prods.*, 657 A.2d at 264 (“For example, in order to have standing to initiate a shareholder derivative suit, a plaintiff must have been a shareholder at the time of the challenged transaction, as well as at the commencement of suit. In addition, this Court has held that a plaintiff must also maintain his shareholder status throughout the derivative litigation.”); see also *Urdan v. WR Capital Partners, LLC*, 244 A.3d 668, 678–80 (Del. 2020) (recognizing that a stockholder who is involuntarily forced to sell their stock in a merger maintains the right to assert post-merger direct claims as an exception to the continuous ownership rule).
- 30  477 A.2d 1040 (Del. 1984).
- 31  *Feldman v. Cutaia*, 951 A.2d 727, 731 & n.20 (Del. 2008) (“It is now well established that a plaintiff may avoid dismissal of his derivative claims following a merger in only two distinct circumstances: where the claims asserted are direct, rather than derivative, or where one of the exceptions recognized in  *Lewis v. Anderson* applies.”).
- 32  152 A.3d 1248 (Del. 2016).
- 33  *El Paso*, 152 A.3d at 1256 (“Standing is therefore properly viewed as a threshold issue to ‘ensure that the litigation before the tribunal is a “case or controversy” that is appropriate for the exercise of the court’s judicial powers.’”) (quoting  *Dover Historical Soc’y*, 838 A.2d at 1110).
- 34  *Id.* (quoting *Schoon v. Smith*, 953 A.2d 196, 202, 208 (Del. 2008)).
- 35  *Id.* (quoting *Gen. Motors Corp. v. New Castle Cty.*, 701 A.2d 819, 824 (Del. 1997)). As we recognized in  *Lewis v. Anderson*, with limited exception, “[a] plaintiff who ceases to be a shareholder, whether by reason of a merger or for any other reason, loses standing to continue a derivative suit.”  477 A.2d at 1049; see also  *El Paso*, 152 A.3d at 1265 (“This rule flows from the fact that, following a merger, ‘the derivative claim—originally belonging to the acquired corporation—is transferred to and becomes an asset of the acquiring corporation as a matter of statutory law.’”) (citation omitted).
- 36  *El Paso*, 152 A.3d at 1256–57.
- 37  845 A.2d 1031 (Del. 2004).
- 38  *El Paso*, 152 A.3d at 1260 (“Because Brinckerhoff’s claim sounds in breach of a contractual duty owed to the Partnership, we employ the two-pronged *Tooley* analysis to determine whether the claim ‘to enforce the [Partnership’s] own rights must be asserted derivatively’ or is dual in nature such that it can proceed directly.”) (alteration in original) (quoting *Loral Space & Commc’ns, Inc. v. Highland Crusader Offshore Partners, L.P.*, 977 A.2d 867, 868 (Del. 2009)).

- 39  845 A.2d at 1035. It is worth noting that under  *Tooley*, a claim can—in certain circumstances—be considered a dual-natured claim, *i.e.*, one that is both direct and derivative.  *El Paso*, 152 A.3d at 1262 (“In unique circumstances, this Court has recognized that some claims can be dual-natured—that is, both direct and derivative.”).
- 40  *El Paso*, 152 A.3d at 1251–52.
- 41  722 A.2d 1243 (Del. 1999).
- 42  *Id.* at 1246.
- 43  *Id.* at 1245.
- 44  546 A.2d 348 (Del. 1988).
- 45  *Parnes*, 722 A.2d at 1245.
- 46 See  *Kramer*, 546 A.2d at 353.
- 47  *Parnes*, 722 A.2d at 1245.
- 48  *Id.*
- 49  *Id.*
- 50 See  *id.* at 1246 (“Although we conclude that the *Parnes* complaint directly challenges the Bally merger, it does not necessarily follow that the complaint adequately states a claim for relief.”).
- 51 See  *id.* 1247 (“Using [the pleadings stage] standard, we find that the complaint states a claim challenging the fairness of the Bally/Hilton merger and challenging the Bally directors’ approval of the merger as having lacked a rational basis.”).
- 52  *Id.* at 1245.
- 53  1999 WL 1271882 (Del. Ch. Dec. 21, 1999).
- 54  *Id.* at \*7 (footnotes omitted).
- 55  2011 WL 2176479 (Del. Ch. May 31, 2011).
- 56 In  *Massey*, the plaintiffs sought to enjoin the merger or create a litigation trust pre-closing to hold the derivative claims.
- 57  *In re Caremark Int’l. Inc. Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996).  *Caremark* claims govern director oversight liability, which require a plaintiff to show that “(a) the directors utterly failed to implement any reporting or information system or controls; or (b) having implemented such a system or controls, consciously

failed to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention.” *Stone ex rel. AmSouth Bancorp. v. Ritter*, 911 A.2d 362, 370 (Del. 2006) (emphasis in original). “Because of the difficulties in proving bad faith director action, a *Caremark* claim is ‘possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.’ ” *City of Birmingham Ret. & Relief Sys. v. Good*, 177 A.3d 47, 55 (Del. 2017) (quoting *In re Caremark*, 698 A.2d at 967).

58 *Brophy*, 70 A.2d 5 (Del. Ch. 1949). *Brophy* and its progeny recognize a cause of action for a plaintiff to recover for misuse of confidential corporate information, which requires a plaintiff to demonstrate that “1) the corporate fiduciary possessed material, nonpublic company information; and 2) the corporate fiduciary used that information improperly by making trades because she was motivated, in whole or in part, by the substance of that information.” *In re Oracle Corp. Deriv. Litig.*, 867 A.2d 904, 934 (Del. Ch. 2004), *aff’d*, 872 A.2d 960 (Del. 2005) (TABLE); *see also Kahn v. Kolberg Kravis Roberts & Co., L.P.*, 23 A.3d 831, 840 (Del. 2011) (“*Brophy* focused on the public policy of preventing unjust enrichment based on the misuse of confidential corporate information.”).

59 *Primedia*, 67 A.3d at 477 (“As I understand the framework established by *Parnes*, a plaintiff wishing to assert such a claim must first establish standing to sue. If standing exists, then the plaintiff must still plead a viable claim.”); *see also In re Straight Path Commc’ns Inc. Consol. S’holder Litig.*, 2018 WL 3120804, at \*14 (Del. Ch. June 25, 2018) (“Having held that the Plaintiffs have standing to sue under *Parnes*, I next consider whether the Complaint states viable claims for breach of fiduciary duty.”), *aff’d sub nom. IDT Corp. v. JDS1, LLC*, 206 A.3d 260 (Del. 2019) (TABLE); *In re Ply Gem Indus., Inc. S’holders Litig.*, 2001 WL 755133, at \*6 (Del. Ch. June 26, 2001) (“Thus, by putting fairly before the Court the contention that [the plaintiffs] are challenging the fairness of the merger price or the merger process, Plaintiffs can survive the derivative-individual obstacle yet still fail to assert a claim that would allow them to move beyond a Rule 12(b) (6) confrontation.”).

60 *Primedia*, 67 A.3d at 477.

61 *Id.* at 483 (emphasis in original).

62 The Court of Chancery has since followed *Primedia* in the context of post-merger challenges. *See In re Riverstone Nat’l, Inc. S’holder Litig.*, 2016 WL 4045411, at \*8 (Del. Ch. July 28, 2016); *Houseman v. Sagerman*, 2014 WL 1600724, at \*10–13 (Del. Ch. Apr. 16, 2014).

63 App. to Opening Br. at A077 (Compl. ¶ 105).

64 *Id.*

65 *See id.* at A0122 (Defendant Spectra Energy Partners (DE) GP, LP’s Opening Br. in Support of its Mot. to Dismiss the Verified Class Action Compl. at 31 n.12) (“For instance, if the derivative claim were considered a toss-up, a theoretical \$47 million recovery (without interest) would represent just 1.4% of the \$3.3 billion merger consideration. If instead the claim had a one-in-five shot, the potential recovery of \$19 million (without interest) for the unaffiliated unitholders would be just 0.57% of the total merger value.”).

- 66  *Parnes*, 722 A.2d at 1245.
- 67  *Primedia*, 67 A.3d at 483. The rationale for this prong is that “[w]ithout such allegations and the resulting inferences, the merger consideration logically would incorporate value for the litigation, and the merger would not have harmed the sell-side stockholders.”  *Id.*
- 68 App. to Opening Br. at A0023 (Compl. ¶ 1 & n.3) (describing the derivative claim that survived the motion to dismiss as “potentially worth more than \$660 million to SEP (and more than \$110 million to SEP’s public unitholders)”).
- 69  *Morris*, 2019 WL 4751521, at \*13.
- 70  *Id.*
- 71  *Id.*
- 72  *Id.* at \*14.
- 73  *Id.* (footnotes omitted).
- 74 See  *Parnes*, 722 A.2d at 1247 (finding that, after taking all pleaded facts as true and drawing reasonable inferences in the plaintiff’s favor, the plaintiff’s claim was direct and withstood dismissal);  *Primedia*, 67 A.3d at 479 (“Assuming these allegations are true, as I must at this procedural stage, ....”).
- 75  *Morris*, 2019 WL 4751521, at \*5 (quoting *Morris v. Spectra Energy Partners (DE) GP, LP*, 2017 WL 2774559, \*16 (Del. Ch. June 27, 2017)).
- 76  *Id.*
- 77 See  *Primedia*, 67 A.3d at 482–83 (after finding the \$190 million  *Brophy* claim material to the \$316 million merger, the court also discounted the  *Brophy* claim’s recovery to \$80 million to reflect the stockholders’ beneficial interest in the litigation recovery and compared it to the stockholders’ \$133 million *pro rata* share of the merger consideration).
- 78  *In re Massey Energy Co.*, 2011 WL 2176479, at \*28–29.
- 79  *Primedia*, 67 A.3d at 483.
- 80  *Dover Historical Soc’y*, 838 A.2d at 1110 (emphasis in original) (quoting  *Stuart Kingston*, 596 A.2d at 1382).

# **EXHIBIT B**

## **HUNTER MOUNTAIN INVESTMENT TRUST'S SUPPLEMENT TO RESPONSE TO MOTION TO STAY**



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June 28, 2004

1998 WL 13858

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Court of Chancery of Delaware.

SHAEV

v.

WYLY

No. 15559-NC.

|

Jan. 6, 1998.

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#### Opinion

STEELE, Vice Chancellor.

\*1 On defendants' Motion for Summary Judgment, I find that where plaintiff: (1) currently owns shares in two independent corporations that used to stand in a parent/wholly-owned subsidiary relationship and (2) once had legal standing as a shareholder of the parent to bring a double derivative action on behalf of the former subsidiary for its directors' alleged breach of fiduciary duty but (3) lost that legal standing when the parent "spun-off" the subsidiary, plaintiff nonetheless has equitable standing to bring a derivative action on behalf of the former subsidiary to recover for the alleged breach of fiduciary duty, even though the challenged actions occurred before plaintiff could have owned shares in the subsidiary.

#### Facts

Plaintiff, David B. Shaev, brings this derivative action on behalf of Sterling Commerce, Inc. ("Commerce"). Commerce was formed in December of 1995 as a wholly-owned subsidiary of Sterling Software, Inc. ("Software"). Plaintiff has owned shares of Software for several years, but he first became a shareholder of Commerce on September 30, 1996, as the result of a spin-off in which he received shares of Commerce as a dividend.

On February 12, 1996, several months before the spin-off, Commerce's directors, Sam Wyly, Charles J. Wyly, Evan A. Wyly, Sterling L. Williams, Warner C. Blow, Honor R. Hill and Robert E. Cook (collectively "defendants"),<sup>1</sup> granted themselves options on 9,000,000 shares of Commerce stock, exercisable at \$24 per share.<sup>2</sup> Software's directors, at least four of whom were also directors of Commerce, approved the option plan on the same day. Software announced its approval of the option plan to its shareholders in a prospectus dated March 8, 1996. Software sold 18.4% of its Commerce shares in a public offering on March 13, 1996, and it divested itself of the remaining 81.6% in the spin-off.

Plaintiff alleges that the options, which may extract from Commerce between \$139 million and \$245 million, constitute excessive compensation to defendants. Plaintiff concedes that because he was a Software shareholder on March 8, 1996, he could have challenged the option plan at that time by filing a double derivative suit on Commerce's behalf. Once the Commerce spin-off was complete, and Software was no longer Commerce's parent, however, plaintiff lost his legal standing to bring a double derivative action on Commerce's behalf. Thus, on February 20, 1997, plaintiff filed suit derivatively on Commerce's behalf, alleging that defendants, "most of [whom] have two or three other full-time jobs ... as their primary occupations" and "cannot reasonably be expected to devote full time attention and service to the business of Commerce,"<sup>3</sup> breached their fiduciary duty of loyalty by granting themselves excessive compensation in a self-interested transaction. Plaintiff seeks, *inter alia*, rescission of the option plan.

Defendants filed a Motion for Summary Judgment, arguing that because the board enacted the option plan when Commerce was a wholly-owned subsidiary of Software, they owed fiduciary duties solely to Software and its shareholders. Although plaintiff held Software shares at the time the options were granted, he did not bring suit in his capacity as a Software shareholder, double derivatively. Defendants contend that they owed plaintiff no fiduciary duty as a

“prospective” shareholder of Commerce and that plaintiff lacks standing to sue as a current shareholder of Commerce, because he does not satisfy the contemporaneous ownership requirement of 8 *Del. C.* § 327.

### Discussion

\*2 A motion for summary judgment may be granted when no genuine issue of material fact is in dispute, and the moving party is entitled to judgment as a matter of law.<sup>4</sup> It is undisputed that at the time the option plan was created, Commerce was a wholly-owned subsidiary of Software. Defendants contend that under *Anadarko Petroleum Corp. v. Panhandle Eastern Corp.*,<sup>5</sup> “[t]he directors of a wholly owned subsidiary cannot be held liable to post-spin stockholders for actions taken by those directors prior to the spin-off.”<sup>6</sup> Defendants argue that *Anadarko* is directly on point and mandates that summary judgment be granted in their favor.

A brief discussion of *Anadarko*'s facts will reveal that the case is not on all fours with the instant case. In *Anadarko*, the Supreme Court addressed “whether a corporate parent and directors of a wholly-owned subsidiary owe fiduciary duties to the prospective stockholders of the subsidiary *after* the parent declares its intention to spin-off the subsidiary.”<sup>7</sup> On August 20, 1986, Panhandle, the parent corporation of Anadarko, announced that on October 1, 1986, it would “distribut[e] one share of Anadarko common stock for each issued and outstanding share of Panhandle stock held of record on September 12, 1986.”<sup>8</sup> To increase the value of the spin-off, representatives of the two corporations applied, successfully, to the New York Stock Exchange to create a market in Anadarko stock before the date of distribution. Approximately three million Anadarko shares were traded on a when-issued basis, reflecting the value of Anadarko as an independent entity, before the dividend distribution date.<sup>9</sup> On September 30, 1996, one day before the distribution date, Anadarko's board, by a 3-2 vote, agreed to modify existing contracts between Panhandle and Anadarko in a manner that was favorable to Panhandle and unfavorable to Anadarko.

Anadarko sued Panhandle and the three former Anadarko directors who had approved the contract modifications. On appeal, Anadarko argued that the contracts were voidable because they were “unfair and were approved in violation of fiduciary duties owed to the prospective stockholders of

Anadarko.”<sup>10</sup> The Supreme Court began its analysis by stating two settled rules of law: (1) “a parent does not owe a fiduciary duty to its wholly-owned subsidiary,”<sup>11</sup> and (2) “in a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders.”<sup>12</sup> Anadarko argued, *inter alia*, that the case at bar presented an exception to these general rules because “by setting a record date for the dividend distribution and by establishing a market for Anadarko shares to be traded on a when-issued basis,” Panhandle created a class of beneficial owners of Anadarko stock to whom it and the Anadarko directors owed fiduciary duties.<sup>13</sup> The Supreme Court disagreed and held that even under the unique circumstances presented, no fiduciary duties were owed to the prospective Anadarko shareholders before the date of distribution.

\*3 *Anadarko* is not controlling in the present case. Software did nothing between the announcement of the spin-off and the distribution date that could arguably suggest it created fiduciary duties where there otherwise were none, and plaintiff does not claim that Commerce's directors owed him a duty as a prospective Commerce shareholder. Unlike *Anadarko*, the spin-off in the present action had not been announced, and may not even have been contemplated, at the time the events now challenged as a breach of fiduciary duty took place. While the general fiduciary duty rules of parents and wholly-owned subsidiaries stated in *Anadarko* apply, the distinct scenario addressed in *Anadarko* is not in issue here. At the time the option plan was enacted, Commerce owed fiduciary duties only to Software and Software's shareholders. That is why, as both parties concede, plaintiff could have filed a double derivative action on Commerce's behalf between March 8 and September 30. Plaintiff never instituted such an action, however. Instead, plaintiff filed a derivative action as a current Commerce shareholder.

This brings us to defendants' second argument. It is undisputed that the option plan was enacted on February 12, 1996, but that plaintiff did not become a Commerce shareholder until September 30, 1996. Thus, defendants contend that plaintiff lacks standing to bring this derivative action, and this Court must grant defendants' Motion for Summary Judgment as a matter of law, because plaintiff was not a Commerce shareholder at the time of the alleged wrong. 8 *Del. C.* § 327 states:

In any derivative suit instituted by a stockholder of a corporation, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of which he complains or that his stock devolved upon him by operation of law.

Plaintiff argues that this presents a catch-22; he alleges that he can make out a case of corporate wrongdoing but, because of the strict application of some technical legal rules, he can sue neither derivatively nor double derivatively, and the alleged wrongdoers are insulated from suit. Plaintiff contends that a court of equity cannot sanction such a result. Indeed, this Court stated as much in *Helfand v. Gambee*.<sup>14</sup>

The plaintiff in *Helfand* owned shares in Twentieth Century Fox Film Corporation (“Fox of N.Y.”). Fox of N.Y. produced and distributed films and, through its wholly-owned subsidiary, National Theaters Corp. (“NTC”), owned and operated movie theatres. In 1951, pursuant to an antitrust consent decree, Fox of N.Y. began a reorganization to separate its film production and distribution assets from its theatre assets. The result of the reorganization, in simplified terms, was that Fox of N.Y. and NTC were dissolved and replaced by two new corporations, respectively, Fox of Delaware and National Theatres, Inc. (“NTI”). The former shareholders of Fox of N.Y., including the plaintiff, held two shares of stock for each share of Fox of N.Y. they had owned, one in Fox of Delaware and one in NTI. The shares in Fox of Delaware represented the shareholders’ interest in Fox’s film production and distribution business, and the shares in NTI represented the shareholders’ interest in Fox’s theatre business.

\*4 The plaintiff later filed a derivative action on behalf of NTI seeking an accounting by its directors, who had also been directors of NTC, for their activities both before and after the reorganization. The director defendants moved to dismiss portions of the complaint on the grounds that, under section 327, the plaintiff had no standing to sue for alleged wrongdoing that occurred before she became a shareholder of NTI. It should be noted, although the *Helfand* Court did not, that before September of 1952, the plaintiff could have filed a double derivative action on behalf of NTC.

This Court allowed the plaintiff to pursue her derivative action, despite the language of section 327 and the fact that the plaintiff had voted in favor the reorganization. The Court found that the purpose of section 327, to prevent the purchasing of shares for the purpose of bringing a derivative action to recover for wrongdoing antedating the purchase, would not be served by preventing the plaintiff’s suit because she was not such a purchaser.<sup>15</sup> The Court also noted that section 327 was not enacted “to prevent the correction of corporate wrongdoing.”<sup>16</sup> Furthermore, the plaintiff had owned shares in Fox of N.Y. since 1941. Thus, the Court stated: “the fact that she holds two pieces of paper instead of one as evidence of her 1941 investment in Fox of New York should not ... foreclose her from complaining of acts antedating the incorporation of [NTI] when such corporation is in effect a successor to Fox of New York.”<sup>17</sup>

This case is analogous to *Helfand*. Plaintiff here did not purchase shares in Commerce to bring suit for actions taken before he was a shareholder. Like the plaintiff in *Helfand*, plaintiff here “was not a direct party to a transaction which made [him] a stockholder de novo.”<sup>18</sup> Rather, plaintiff has owned shares in Software for several years, and he became a shareholder in Commerce only because Software declared the stock dividend. Thus, the sole aim of section 327 would not be served by denying plaintiff standing to sue.<sup>19</sup> To the contrary, to deny standing on these facts would insulate defendants from potential liability for their alleged misdeeds.

Defendants argue that *Helfand* is no longer good law, having been implicitly overruled by *Anadarko*. Again, I believe defendants’ interpretation of *Anadarko* misses the mark. The contemporaneous ownership requirement of section 327 was not implicated in *Anadarko* because the former subsidiary corporation brought suit on its own behalf; no shareholder sued derivatively. *Anadarko*’s holding, that under the circumstances of that case, the parent corporation did not assume fiduciary duties with respect to a class of prospective shareholders the parent created by its own actions, has no applicability to the present case, where plaintiff seeks relief for alleged wrongs that occurred when plaintiff could not have been a prospective shareholder because the impending spin-off had not been announced and may not even have been contemplated.

### Conclusion

\*5 Plaintiff, as a Software shareholder, had the right to bring a double derivative action on behalf of Commerce for a period of months. Why he did not do so is unclear. I decide only that Software's decision to divest itself of its entire interest in Commerce cannot, as a matter of law, deprive plaintiff of standing to bring a derivative action on behalf of Commerce,

even where the challenged actions occurred before plaintiff owned shares in Commerce.

**IT IS SO ORDERED.**

### All Citations

Not Reported in A.2d, 1998 WL 13858

### Footnotes

1 Sterling Commerce, Inc., is a nominal defendant.

2 Honor R. Hill and Robert E. Cook did not vote in the original option grant; rather, they received their options automatically upon their election to Commerce's Board of Directors, on March 4, 1996. The right to receive the automatic options was established by the other five individual defendants, on February 12, 1996.

3 Complaint at para. 17.

4 See, e.g., **Berdel, Inc. v. Berman Real Estate Mgmt. Inc.**, Del.Ch., C.A. No. 13579, Jacobs, V.C., (Dec. 15, 1997), Mem.Op. at 2.

5 Del.Supr.,  545 A.2d 1171 (1988).

6 Defendants' Reply Brief in Support of Motion for Summary Judgment at 1.

7  **Anadarko**, 545 A.2d at 1172. (Emphasis added)

8  **Id.** at 1173.

9 **Id.** Trading also commenced on an “ex-distribution” basis, reflecting only the value of Panhandle, and continued to be traded the “regular way,” reflecting the combined value of both corporations. **Id.**

10 **Id.**

11 **Id.** at 1174. (Citations omitted)

12 **Id.**

13 **Id.**

14 Del.Ch.,  136 A.2d 558 (1957).

15 **Id.** at 562.

16 **Id.** at 561.

17 **Id.** at 562.

18 ***Id.***

19 The sole purpose of section 327 is “to prevent what has been considered an evil, namely, the purchasing of shares in order to maintain a derivative action designed to attack a transaction which occurred prior to the purchase of the stock.”  ***Rosenthal v. Burry Biscuit Corp.***, Del.Ch., 60 A.2d 106, 111 (1948).

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024

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**APPELLANT RECORD**

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

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

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

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

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

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

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

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

- 000001*
1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

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

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04/23/2023	19-34054	3760	Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding
05/11/2023	19-34054	3780	Claim Purchaser's Objection to (I) Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding; and (II) Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding
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09/08/2023	19-34054	3905	Hunter Mountain Investment Trust's Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/05/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
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01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

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12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust
01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint
05/20/2024	23-03038	0025	Transcript Regarding Hearing Held February 14, 2024 Before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets <i>SEE MIMI RECORD</i>
05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets <i>SEE MIMI RECORD</i>

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

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*Counsel for Dugaboy Investment Trust and the  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

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

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

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

**COMPLAINT TO (I) COMPEL DISCLOSURES  
ABOUT THE ASSETS OF THE HIGHLAND CLAIMANT TRUST AND  
(II) DETERMINE (A) RELATIVE VALUE OF THOSE ASSETS, AND  
(B) NATURE OF PLAINTIFFS' INTERESTS IN THE CLAIMANT TRUST**

Plaintiffs The Dugaboy Investment Trust (“Dugaboy”) and Hunter Mountain Investment Trust (“HMIT” and collectively with Dugaboy, the “Plaintiffs”) file this adversary complaint (the “Complaint”) against Defendants Highland Capital Management, L.P. (“HCM” or the “Debtor”) and the Highland Claimant Trust (the “Claimant Trust,” and collectively with HCM, the “Defendants”), seeking: (1) disclosures about all distributions and an accounting of the assets and liabilities currently held in the Claimant Trust; (2) a determination of the value of the assets and liabilities; and (3) declaratory relief setting forth the nature of Plaintiffs’ interests in the Claimant Trust.

### **PRELIMINARY STATEMENT**

1. As holders of Contingent Claimant Trust Interests<sup>1</sup> that vest into Claimant Trust Interests once all creditors are paid in full, and as defendants in litigation pursued by Marc S. Kirschner (“Kirschner”) as Trustee of the Litigation Sub-Trust (which seeks to recover damages on behalf of the Claimant Trust), Plaintiffs file this Complaint to obtain information about the assets and liabilities of the Claimant Trust, which was established to monetize and liquidate the assets of the HCM bankruptcy estate.

2. Defendants’ October 21, 2022, January 24, 2023, and April 21, 2023 post-confirmation reports show that even with inflated claims and below-market sales of assets, cash available – if not squandered in self-serving litigation – is more than enough to pay class 8 and class 9 creditors in full. With more than \$100 million in assets left to monetize (not even counting related party notes), and almost \$550,000 in assets already monetized, even after burning through more than \$100 million in professional fees, there is and was more than enough money to pay the inflated \$387 million in creditor claims the Debtor allowed. These numbers compel the question

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<sup>1</sup> Capitalized terms not defined have the meanings set forth herein. If no meaning is set forth herein, the terms have the meaning set forth in the Fifth Amended Plan of Reorganization (as Modified) [Docket No. 1808].

– “What was all of this for, other than to justify outsize fees and bonuses for the professionals involved?” See paragraphs 17-18 below. And despite repeated and increasingly specific requests, the Debtor has never provided granular enough information to specifically identify all of the monies raised and where all the money has gone, including another hundred million dollars that appears to be unaccounted. *Id.*

3. Accordingly, Plaintiffs and the entire estate would benefit from a close evaluation of current assets and liabilities. Such evaluation will also show whether assets were marked below appraised value during the pandemic and unreasonably held on the books *at those crisis period values*, along with overstated liabilities, to justify continued litigation. That litigation has served to enable James P. Seery (“Mr. Seery”) and other estate professionals to carefully extract nearly every last dollar out of the estate (along with incentive fees), leaving little or nothing for the owners that built the company.

4. Significantly, Kirschner seems to concede the merits of Plaintiffs’ position. After Plaintiffs began seeking the relief sought herein (originally by way of motion), Kirschner himself sought a stay of the massive litigation he instituted to evaluate whether the estate actually needed to collect additional funds. Plaintiffs and other defendants in that litigation agreed to the stay but could not convince the Debtor to provide the kind of fulsome disclosure that would allow Plaintiffs to evaluate for themselves the status of the estate, which secrecy continues to leave Plaintiffs with suspicions that prevent an overall resolution of the bankruptcy with no further need for indemnification reserves. Rather, Debtor continues to provide summary information that is not sufficient to enable Plaintiffs to determine the amounts of money being spent on administration and litigation, and not sufficient to determine whether if all litigation ceased, the estate could pay all creditors with money to spare for equity. Plaintiffs are especially concerned because the

information they have gleaned suggests inappropriate self-dealing that undermines confidence in the Debtor's financial reporting, making the relief sought herein all the more important.

5. While grave harm has already been done by the Defendants' excessive litigation and unnecessary secrecy, valuation now would at least enable the Court to put an end to this already long-running case and salvage some value for equity. As this Court observed in *In re ADPT DFW Holdings*, where there is significant uncertainty about insolvency, protections must be put in place so that the conduct of the case itself does not deplete the equity. In some cases, the protection is in the form of an equity committee; here a prompt valuation of the estate is needed.

6. Upon information and belief, during the pendency of HCM's bankruptcy proceedings, creditor claims and estate assets have been sold in a manner that fails to maximize the potential return to the estate, including Plaintiffs. Rather, Mr. Seery, first acting as Chief Executive Officer and Chief Restructuring Officer of the Debtor and then as the Claimant Trustee, facilitated the sale of creditor claims to entities that had undisclosed business relationships with Mr. Seery; entities that Mr. Seery knew would approve inflated compensation to him when the hidden but true value of the estate's assets were realized. Because Mr. Seery and the Debtor have failed to operate the estate in the required transparent manner, they have been able to justify pursuit of unnecessary avoidance actions (for the benefit of the professionals involved), even though the assets of the estate, if managed in good faith, should be sufficient to pay all creditors.

7. Further, by understating the value of the estate and preventing open and robust scrutiny of sales of the estate's assets, Mr. Seery and the Debtor have been able to justify actions to further marginalize equity holders that otherwise would be in the money, such as including plan and trust provisions that disenfranchise equity holders such as Plaintiffs by preventing them from having any input or information unless the Claimant Trustee certifies that all other interest holders

have been paid in full. Because of the lack of transparency to date, unless the relief sought herein is granted, there will be no checks and balances to prevent a wrongful failure to certify, much less any process to ensure that the estate has been managed in good faith so as to enable all interest holders, including the much-maligned equity holders, to receive their due.

8. By demonizing the estate equity holders, withholding information, and manipulating the sales of claims and assets, Mr. Seery and the Claimant Trust have maximized the potential for a grave miscarriage of justice and at this time it appears their underhanded plan is succeeding.

9. By June 30, 2022, the estate had \$550 million in cash and approximately \$120 million of other assets despite paying what appears in reports to be over \$60 million in professional fees and selling assets non-competitively, perhaps as much as \$75 million below market price.<sup>2</sup> As detailed below, total pre-confirmation professional fees are now over \$100 million.

10. On information and belief, the value of the assets in the estate as of June 1, 2022 was:

<u>Highland Capital Assets</u>		<u>Value in Millions</u>	
		<u>Low</u>	<u>High</u>
Cash as of Feb 1, 2022		\$125.00	\$125.00
Recently Liquidated	\$246.30		
Highland Select Equity	\$55.00		
Highland MultiStrat Credit Fund	\$51.44		
MGM Shares	\$26.00		
Portion of HCLOF	\$37.50		
Total of Recent Liquidations	\$416.24	\$416.24	\$416.24
<b>Current Cash Balance</b>		<b>\$541.24</b>	<b>\$541.24</b>
Remaining Assets			
Highland CLO Funding, LTD		\$37.50	\$37.50
Korea Fund		\$18.00	\$18.00
SE Multifamily		\$11.98	\$12.10

<sup>2</sup> Examples of non-competitive sales are set forth in letters to the United States Trustee dated October 5, 2021, November 3, 2021 and May 11, 2022.

Affiliate Notes <sup>3</sup>		\$50.00	\$60.00
Other (Misc. and legal)		\$5.00	\$20.00
<b>Total (Current Cash + Remaining Assets)</b>		<b>\$663.72</b>	<b>\$688.84</b>

11. By June 2022, Mr. Seery had also engineered settlements making the inflated face amount of the major claims against the estate \$365 million, but which traded for significantly less.

<b>Creditor</b>	<b>Class 8</b>	<b>Class 9</b>	<b>Beneficiary</b>	<b>Purchase Price</b>
Redeemer	\$137.0	\$0.0	Claim buyer 1	\$65 million
ACIS	\$23.0	\$0.0	Claim buyer 2	\$8.0
HarbourVest	\$45.0	\$35.0	Claim buyer 2	\$27.0
UBS	\$65.0	\$60.0	Claim buyers 1 & 2	\$50.0
<b>TOTAL</b>	<b>\$270.0</b>	<b>\$95.0</b>		<b>\$150.0 million</b>

12. Mr. Seery made no efforts to buy the claims into the estate or resolve the estate efficiently. Mr. Seery never made a proposal to the residual holders or Mr. Dondero and never responded to the many settlement offers from Mr. Dondero with a reorganization (as opposed to liquidation) plan, even though many of Mr. Dondero's offers were in excess of the amounts paid by the claims buyers.

13. Instead, Mr. Seery brokered transactions enabling colleagues with long-standing but undisclosed business relationships to buy the claims without the knowledge or approval of the Court. Because the claims sellers were on the creditors committee, Mr. Seery and those creditors had been notified that “Creditors wishing to serve as fiduciaries on any official committee are advised that they may not purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court.” These transactions are particularly suspect because, depending on the claim, the claims buyers paid amounts only fractionally higher, equivalent to, or, in some cases, less than the value the Plan estimated would be paid three years later. Sophisticated claims buyers responsible to investors of their own would

<sup>3</sup> Some of the Affiliate Notes should have been forgiven as of the MGM sale and/or have other defenses, but litigation continues over that also.

not pay what appeared to be full price unless they had material non-public information that the claims could and would be monetized for much more than the public estimates made at the time of Plan confirmation – as indeed they have been.

14. On information and belief, Mr. Seery provided such information to claims buyers, rather than buying the claims in to the estate for the roughly \$150 million for which they were sold. By May 2021, when the claims transfers were announced to the Court, the estate had over \$100 million in cash and access to additional liquidity that could have been used to retire the claims for the sale amounts, leaving an operating business in the hands of its equity owners.

15. Specifically, Mr. Seery could and should have investigated seeking sufficient funds from equity to pay all claims and return the estate to the equity holders. This was an obvious path because the estate had assets sufficient to support a \$59 million line of credit, as Mr. Seery eventually obtained. If funds had been raised to pay creditors in the amounts for which claims were sold, much of the massive administrative costs run up by the estate would never have been incurred because the larger amounts would not have been needed. One such avoided cost would be the post-effective date litigation pursued by Mr. Kirschner, as Litigation Trustee for the Litigation Sub-Trust, whose professionals likely charged over \$2000 an hour for senior lawyers and over \$800 an hour for first year associates (data obtained from other cases because there has been no disclosure in the HCM bankruptcy of the cost of the Kirschner litigation). However, buying the claims to resolve the bankruptcy and enabling equity to resume operations would not have had the critical benefit to Mr. Seery that his scheme contained: placing the decision on his incentive bonus, perhaps as much as \$30 million or more, in the hands of grateful business colleagues who received outsized rewards for the claims they were steered into buying. The parameters of Mr. Seery's incentive compensation is yet another item cloaked in secrecy, contrary to the general rule that the

hallmark of the bankruptcy process is transparency. These circumstance show why Plaintiffs are right to be concerned and why it is critical that transparency be achieved.

16. But worse still, even with all of the manipulation that appears to have occurred, Plaintiffs believe that the combination of cash and other assets held by the Claimant Trust in its own name and held in various funds, reserve accounts, and subsidiaries, if not depleted by unnecessary litigation, would still be sufficient to pay all Claimant Trust Beneficiaries in full, with interest now.

17. Set forth below is Plaintiffs’ best estimate of the assets of the estate. Plaintiffs have been seeking information to enable to them to confirm the accuracy of their estimates, but the Debtor has refused to provide the necessary information to do so. Indeed, after the last quarterly report, in which Debtor provided some but not all of the information Plaintiffs were seeking, Plaintiffs sent a revised list, more precisely targeting the remaining information sought. Because Debtor failed to respond, it remained necessary to file this adversary proceeding.

18. This is Plaintiffs’ best estimate of the assets of the Highland estate and its cash flows. It is obvious that even if off by a significant percent, no further litigation to collect assets for the estate is needed to pay creditors. Moreover, the ample solvency of the estate was or should have been obvious to the estate professionals for quite some time, making the substantial cash burn in the estate utterly unconscionable.

Assets	Amount	Backup
<b>HCMLP Assets to be Monetized<sup>1</sup></b>		
<b>As of 3/31/23 (Est.)</b>		
Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“HCLOF”)	\$ 25,000,000	Debtor Pleading (re ACIS) Dkt 1235 Filed 08/18/21 p.3n.10 (\$25 m); 3/31/23 DAF Multi-Strat Statement (\$19.5 m est); more value in the 1.0 CLOS (Brentwood – 17%;Gleneagles – 1%;Grayson – 5%;Greenbriar-23%;Liberty-18%;Rockwall-15%)

Highland Multi Strategy Credit Fund, L.P. ("MS")		30,817,992	ADV 3/31/23 (rev 4/24/2023)
Highland Restoration Capital Partners Master LP & Highland Restoration Capital Partners, L.P. ("RCP")		24,192,773	ADV 3/31/23 (rev 4/24/2023)
Stonebridge-Highland Healthcare Private Equity Fund ( "Korea Fund")		5,701,330	ADV 3/31/23 (rev 4/24/2023)
SE Multifamily Holdings LLC ("SE Multifamily")		12,400,000	Communications with Debtor that apparently values it higher
Other		5,000,000	Other investments on the post-confirmation report
<b>Assets as of 3/31/21 (Est.)<sup>1</sup></b>		<b>\$ 103,112,095</b>	
<b>HCMLP Monetizations &amp; Management Fees (est.)</b>	<b>Sale date if known</b>		
<b>10/31/19 - 3/31/23 (Est.)</b>			
Targa	October ?, 2021	\$ 37,500,000	Uptick from COVID; market communications
Trussway	Sept. 1, 2022	180,000,000	90% of sales price 200MM, net of debt; need confirmation
Cornerstone	Jan. 23, 2023	132,500,000	Assume 53% of sales price obtained because: HCM owns about 50% of RCP and 60% of Crusader (and assume increase in value of MGM within Cornerstone should have been enough to offset its debt) Sale announced May 12, 2022
SSP	Month/date/2020	18,000,000	Market communications
MGM Direct	Mar. 17, 2022	25,000,000	@ \$145, sale announced May 2021
Petrocap	Aug. 10, 2021	2,684,886	Dkt, 2537, sale motion
Uchi	Aug. 6, 2021	9,750,000	Dkt 2687, sale order
Jefferies Account & DRIP		60,000,000	FV form 206, net of debt, but NXRT moved from \$40-\$80ish; don't know when monetized, so number could be low
Terrell (raw land)		500,000	FV Form 206
Mgmt Fees/Dist/Fund loan repayments (est.)		30,000,000	3 years mgmt fees, misc distributions in MS/RCP/Korea, loan paybacks
Siepe		3,500,000	Market communications
HCLOF		35,000,000	Calculated based on DAF distributions
<b>Total Monetizations &amp; Cash Flows (Est.)</b>		<b>\$ 534,434,886</b>	
<b>Total Assets as of 3/31/23 &amp; Prior Monetizations &amp; Management Fees</b>		<b>\$ 637,546,981</b>	

<b>Cash Roll</b>			
<b>10/31/19 - 3/31/23 (Est.)</b>			
Cash as of 10/31/2019		\$ 2,286,000	
Monetizations & Cash Flows (10/31/19 - 3/31/23)		534,434,886	
Less: Cash on Hand as of 3/31/23		(57,000,000)	ADV 3/31/23
Fees, Distributions & Other Receipts (10/31/19 - 3/31/23) <sup>2</sup>		\$ 479,720,886	
Administrative Fees Paid		\$ 100,781,537	Dkt 3756 filed on 4/21/23 (\$33,005,136 for Professional fees (bk); \$7,604,472 for Professional fees (nonbk); \$60,171,929 for all prof fees and exp (Debtor & UCC). Note: this appears to "Preconfirmation." What are the post confirmation amounts?)
Cumulative Payments to Creditors		276,709,651	Dkt 3756 - Unsecured, priority, secured and admin.
Other Unknown Payments or ?		102,229,698	The \$102 million is calculated by subtracting cumulative payments to creditors and known pre conf prof fees and costs from the \$479 million determined above. Where are these funds; what were they used for?
Fees & Distributions Paid (10/31/19 - 3/31/23)		\$ 479,720,886	
<sup>1</sup> Does not include approximately \$70MM in affiliate notes			
<sup>2</sup> Includes \$100MM of fees paid during bankruptcy			

19. In short, it appears that the professionals representing HCM, the Claimant Trust, and the Litigation Sub-Trust have been litigating claims against Plaintiffs and others, even though the only beneficiaries of any recovery from such litigation would be Plaintiffs in this adversary proceeding (and of course the professionals pressing the claims). It is only the cost of the pursuit of those claims that threatens to depress the value of the Claimant Trust sufficiently to justify continued pursuit of the claims, creating a vicious cycle geared only to enrich the professionals, including Mr. Seery, and to strip equity holders of any meaningful recovery. Even with the stay of

the Kirschner litigation, the Debtor continues to pursue litigation, such as its vexatious litigant motion, and presumably opposing this litigation, that unnecessarily depletes the estate.

20. Based upon the restrictions imposed on Plaintiffs, including the unprecedented inability for Plaintiffs, as holders of Contingent Claimant Trust Interests, to access virtually any financial information related to the Claimant Trust, Plaintiffs have little to no insight into the value of the Claimant Trust assets versus the Claimant Trust's obligations and no method to independently ascertain those amounts until Plaintiffs become Claimant Trust Beneficiaries. Because Mr. Seery and the professionals benefiting from Mr. Seery's actions have ensured that Plaintiffs are in the dark regarding the estate's assets and liabilities, as well as the estate's professional and incentive fees that are rapidly depleting the estate, there is a compelling need for the relief sought herein.

21. In bringing this Complaint, Plaintiffs are seeking transparency about the assets currently held in the Claimant Trust and their value—information that would ultimately benefit all creditors and parties-in-interest by moving forward the administration of the Bankruptcy Case.

### **JURISDICTION AND VENUE**

22. This adversary proceeding arises under and relates to the above-captioned Chapter 11 bankruptcy case (the "Bankruptcy Case") pending before the United States Bankruptcy Court for the Northern District of Texas (the "Court").

23. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

24. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(A) and (O).

25. In the event that it is determined that the Court, absent consent of the parties, cannot enter final order or judgments over this matter, Plaintiffs do not consent to the entry of a final order by the Court.

### **THE PARTIES**

26. Dugaboy is a trust formed under the laws of Delaware.
27. HMIT is a trust formed under the laws of Delaware.
28. HCM is a limited partnership formed under the laws of Delaware with a business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201.
29. The Claimant Trust is a statutory trust formed under the laws of Delaware with a business address of 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

### **CASE BACKGROUND**

30. On October 16, 2019 (the “Petition Date”), HCM, a 25-year Delaware limited partnership in good standing, filed for Chapter 11 restructuring in the United States Bankruptcy Court for the District of Delaware.

31. At the time of its chapter 11 filing, HCM had approximately \$400 million in assets (ultimately monetized for much more as a result of market events, such as the sale of HCM’s portfolio companies for substantial profits, as was always planned by Mr. Dondero) and had only insignificant debt owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. [Dkt. No. 1943, ¶ 8]. HCM’s reason for seeking bankruptcy protection was to restructure judgment debt stemming from an adverse arbitration award of approximately \$190 million issued in favor of the Redeemer Committee of the Crusader Funds, which, after offsets and adjustments, would have been resolved for about \$110 million. Indeed, the Redeemer Committee sold its claim for about \$65 million, well below the expected \$110 million,<sup>4</sup> and indeed, even below amounts for which Dondero offered to buy the claim.

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<sup>4</sup> Reports that Redeemer Committee was paid \$78 million note that in addition to the claim, the Committee sold other assets as well, which on information and belief, amounted to about \$13 million.

32. At the urging of the newly-appointed Unsecured Creditors Committee (the “Committee”), and over the objection of HCM and its management, the Delaware Bankruptcy Court transferred the bankruptcy case to this Court on December 4, 2019. It seems likely that the creditors sought this transfer to take advantage of antipathy the Court had exhibited to HCM and its management in the ACIS bankruptcy.<sup>5</sup> Shortly after the transfer, and likewise influenced by the adverse characterizations of HCM management in the ACIS bankruptcy, the U.S. Trustee, notwithstanding the Debtor’s apparent solvency, sought appointment of a chapter 11 trustee.

33. To avoid the appointment of a chapter 11 trustee and the potential liquidation of a potentially solvent estate, the Committee and the Debtor agreed that Strand Advisors, Inc., HCM’s general partner, would appoint a three-member independent board (the “Independent Board”) to manage HCM during its bankruptcy. The three board members were:

- a. James P. Seery, Jr. – (who was selected by arbitration awardee and Committee member, the Redeemer Committee);
- b. John Dubel – (who was selected by Committee member UBS); and
- c. Former Judge Russell Nelms – (who was selected by the Debtor).

34. The Bankruptcy Court almost immediately and then repeatedly let the Debtor’s professionals know that its feelings about Mr. Dondero and other equity holders had not changed – a disclosure that led inexorably to the many acts that now threaten to wipe out entirely the value of the equity. For example, at one of the earliest hearings, the Court rejected recommendations by

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<sup>5</sup> For example, at a hearing in Delaware Bankruptcy Court on the Motion to Transfer Venue to this Court, Mr. Pomerantz, counsel for Debtor stated, “The debtor filed the case in this district because it wanted a judge to preside over this case that would look at what’s going on with this debtor, with this debtor’s management, this debtor’s post-petition conduct, without the baggage of what happened in a previous case, which contrary to what Acis and the committee says, has very little do with this debtor.” [December 2, 2019 Hearing Transcript at 79, Case No. 19012239 (CSS), Docket No. 181]. The taint of the ACIS case can be seen in that, without having read or even seen the supposedly offending complaint, during the ACIS case Judge Jernigan called Mr. Dondero not just vexatious, but “transparently vexatious,” for allegedly having sued Moody’s for failing to downgrade certain CLOs that ACIS had been manipulating in violation of its indentures and even though the Plaintiff in the supposedly offending case was not Mr. Dondero or any company he controlled [September 23, 2020 Hearing Transcript at 51-52, In re Acis Capital Management, L.P. and Acis Capital Management GP, LLC, Case No. 18-30264-SGJ-11, Docket No. 1186].

Judge Nelms, suggesting he was bamboozled because he was under management's spell. Specifically, Judge Jernigan admitted that normally "Bankruptcy Courts should defer heavily to the reasonable exercise of business judgment by a board... But I'm concerned that Dondero or certain in-house counsel has -- you know, they're smart, they're persuasive... they have exercised their powers of persuasion or whatever to make the Board and the professionals think that there is some valid prospect of benefit to Highland with these [actions], when it's really all about . . . Mr. Dondero." [February 19, 2020 Hearing Transcript at 177.]

35. At around the same time that the Court telegraphed animus towards Mr. Dondero, it also squelched oversight by responsible professionals who could and would have ensured transparency. When the Committee and the Debtor reported to the Court that they had agreed to use Judge Jones and Judge Isgur in Houston as mediators to potentially resolve the bankruptcy case, Judge Jernigan stated that she was "surprised that Judge Jones' or Judge Isgur's staff expressed that they had availability." Debtor's counsel then asked if he could independently follow up with staff for Judges Jones and Isgur regarding their availabilities, and Judge Jernigan said, "I'll take it from here." Six days later, Judge Jernigan simply said, "my continued thought on that [mediation by Judges Jones and Isgur] is that they just don't have meaningful time." [July 14, 2020 Hearing Transcript at 121.] In retrospect, this avoided scrutiny of the case by professionals who would recognize and potentially curtail the Court's unprecedented, immediately biased conduct of the case. This sent a powerful message to Mr. Seery and the other professionals who developed strategies to enrich themselves to the detriment of any possibility of a quick reorganization with equity regaining control.

36. Meanwhile, not realizing the turn the bankruptcy was about to take, Mr. Dondero had agreed to step down as CEO of the Debtor and to the appointment of an Independent Board only

because he was assured that new, independent management would expedite an exit from bankruptcy, preserve the Debtor's business as a going concern, and retain and compensate key employees whose work was critical to ensuring a successful reorganization.

37. None of that happened. Almost immediately, Mr. Seery emerged as the *de facto* leader of the Independent Board. On July 14, 2020, the Court retroactively appointed Mr. Seery Chief Executive Officer and Chief Restructuring Officer, vesting him with the fiduciary responsibilities of a registered advisor to investors and fiduciary responsibilities to the estate. [Dkt. No. 854]. And although Mr. Seery publicly represented that he intended to restructure and preserve HCM's business, privately he was engineering a much different plan.

38. Mr. Seery's public-facing statements stand in stark contrast to what actually happened under his direction and control. For example, Mr. Seery initially reported consistently positive reviews of the Debtor's employees, describing the Debtor's staff as a "lean" and "really good team." He also testified: "My experience with our employees has been excellent. The response when we want to get something done, when I want to get something done, has been first-rate. The skill level is extremely high."

39. Yet, despite these glowing reviews, Mr. Seery failed to put a key employee retention program into place, and although key employees supported Mr. Seery and the Debtor through the plan process, ultimately Mr. Seery fired most of those employees. It was clear that Mr. Seery was firing anyone with perceived loyalty to Mr. Dondero, no doubt leaving remaining staff fearful of challenging Mr. Seery, lest they too be fired.

40. From the start, and before there was much litigation to speak of, the Court regularly referred to Mr. Dondero and related parties as "vexatious litigants," emboldening the Debtor to do the same, even while admitting it had not presented evidence that Mr. Dondero was a vexatious

litigant. This was plainly a carryover from the ACIS case where the Court labelled Mr. Dondero a “transparently” vexatious litigant based on pleadings she had only heard about from parties opposing Dondero and admittedly had not read herself. Ironically, the first time Mr. Dondero was labeled “vexatious” by the Court in the HCM case, he was defending himself from three lawsuits initiated by the Debtor and had commented on proposed settlements in the case, but had not himself initiated any actions in the case. Thereafter, though, the Debtor and its professionals repeated the mantra that Dondero and his companies were vexatious litigants to successfully oppose sharing information about the estate with them.

41. In addition to the Debtor’s mistreatment of employees, under the control of the Independent Board, most of the ordinary checks and balances that are the hallmark of bankruptcy were ignored. Despite providing regular and robust financial information to the Committee, the Debtor inexplicably failed and refused to file quarterly 2015.3 reports, leaving stakeholders, including Plaintiffs, in the dark about the value of the estate and the mix of assets it held, bought or sold. Amplifying the lack of transparency, Mr. Seery further engineered transactions that also served to hide the real value of the estate.

42. For example, he authorized the Debtor to settle the claims of HarbourVest (which claims had initially been valued at \$0) for \$80 million, in order to acquire HarbourVest’s interest in Highland CLO Funding, Ltd. (“HCLOF”), gain HarbourVest’s vote in favor of its Plan, and hide the value of Debtor’s interest in HCLOF by placing it into a non-reporting subsidiary. This created another pocket of non-public information because the pleadings supporting the 9019 settlement valued the HCLOF interest at \$22 million, when, on information and belief, it was worth \$34.1 million at the time, about \$40 million when the settlement was consummated, and over \$55 million 90 days later when the MGM sale was announced.

43. At the same time, Mr. Seery and the Independent Board deliberately shut out equity holders from any discussion surrounding the plan of reorganization or HCM's efforts to emerge from bankruptcy as a going concern. Indeed, as noted above, Mr. Seery failed to meaningfully respond to the many proposals made by residual equity holders to resolve the estate and never encouraged any dialogue between creditors and equity holders. These failures only contributed to the difficulty of getting stakeholders' buy-in for a reorganization plan and significantly undermined an efficient exit from bankruptcy.

44. Worse still, while knowing that HCM had sufficient resources to emerge from bankruptcy as a going concern (and, on information and belief, while knowing that the estate was solvent), Mr. Seery and the Independent Board failed to propose any plan of reorganization that contemplated HCM's continued post-confirmation existence. Instead, and inexplicably, the very first plan proposed contemplated liquidation of the company, as did all subsequent plans.

45. While secretly engineering the total destruction of HCM, Mr. Seery also privately settled multiple proofs of claim against the estate at inflated levels that were unreasonable multiples of the Debtor's original estimates. He did this notwithstanding the Debtor's early and vehement objection to many of the claims as baseless. But instead of litigating those objections in a manner that would have exposed the true value of the claims, on information and belief, Mr. Seery settled the claims as a means of brokering sales of the claims at 50-60% of their face values. That is, the inflated values softened up claims sellers to induce them to sell. Had the Debtor instead fought the inflated proofs of claim in open court, it could have settled the claims for closer to true value and ensured that the estate had sufficient resources to pay them.

46. It is also no coincidence that virtually all original proofs of claim were sold to buyers that had prior business relationships with Mr. Seery and/or affiliates of Grosvenor (a

company with which Mr. Seery has a long personal history)—buyers that ultimately would be positioned to approve a favorable compensation and bonus structure for Mr. Seery.

47. That the claims sales happened at all is curious in light of the scant publicly-available information about the value of the estate. It would have been impossible, for example, for any of the claims buyers to conduct even modest due diligence to ascertain whether the purchases made economic sense. In fact, the publicly-available information purported to show a net decrease in the estate’s asset value by approximately \$200 million in a matter of months during the global pandemic. Dkt. 2949. Given the sophistication of the claims-buyers, their purchases of claims at prices that in some cases exceeded published expected recoveries (according to the schedules then available to the public) would only make sense if they obtained inside information regarding the transactions undertaken by Debtor management that would justify the transfer pricing.

48. And indeed, the claims could and would be monetized for much more than the publicly-available information suggested (as only one with inside information would know). In October 2022, \$250 million was paid to Class 8 holders. That is about 85% of the inflated proofs of claim and \$90 million more than plan projections. On information and belief, claims buyers have thus had an over 170% annualized return thus far, with more to come. On information and belief, Mr. Seery will use this “success” to justify an incentive bonus estimated in the range of \$30 million or more, while engineering the estate to prevent equity holders from objecting or even knowing.

49. At the same time, the Claimant Trust has made no distributions to Contingent Claimant Trust Interest holders and has argued in various proceedings that no such distributions are likely. No wonder. The cost of holding open the estate, including unnecessary litigation costs,

appears to have exceeded \$140 million post-confirmation, and seems geared to ensure that no such distributions can occur, even though it can now be projected that the litigation is not needed to pay creditors. *See* Docket No. 3410-1.

50. It is worth noting that it appears that virtually all of the claims trades brokered on behalf of Committee members seem to have occurred while those entities remained on the Committee. Yet at the outset of their service, Committee members were instructed by the United States Trustee that “Creditors wishing to serve as fiduciaries on any official committee are advised that they may *not* purchase, sell or otherwise trade in or transfer claims against the Debtor while they are committee members absent an order of the Court.” Thus, the claims trades violated Committee members’ fiduciary duty to the estate while lining the pockets of Mr. Seery and other Debtor professionals, to the detriment of creditors and residual equity holders.

51. The sales of claims were not the only transactions shrouded in secrecy. As further detailed in other litigation, assets were sold with insufficient disclosures, no competitive bidding, no data room, and without inviting equity (which may have at one time had the knowledge to make the highest bid) to participate in the sales process. Indeed, on occasion assets were sold for amounts less than Mr. Dondero’s written offers. This exacerbated the harms caused by the lack of transparency characterized by the Court’s indifference to the Debtor’s complete failure to abide by its Rule 2015 disclosure obligations.

52. In short, the lack of transparency combined with at least the appearance of bias, if not actual bias of the Bankruptcy Court, emboldened and enabled an opportunistic CRO to manipulate the bankruptcy to enrich himself, his long-time business associates, and the professionals continuing to litigate to collect fees to pay claims that, but for that manipulation, could have been resolved with money left over for equity.

## STATEMENT OF FACTS

### **A. Plaintiffs Hold Contingent Claimant Trust Interests**

53. As of the Petition Date, HCM had three classes of limited partnership interests (Class A, Class B, and Class C). *See* Disclosure Statement [Docket No. 1473], ¶ F(4).

54. The Class A interests were held by Dugaboy, Mark Okada (“Okada”), personally and through family trusts, and Strand Advisors, Inc. (“Strand”), HCM’s general partner. The Class B and C interests were held by HMIT. *Id.*

55. In the aggregate, HCM’s limited partnership interests were held: (a) 99.5% by HMIT; (b) 0.1866% by Dugaboy, (c) 0.0627% by Okada, and (d) 0.25% by Strand.

56. On February 22, 2021, the Court entered the Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief [Docket No. 1943] (the “Confirmation Order”) [Docket No. 1808] (the “Plan”).

57. In the Plan, General Unsecured Claims are Class 8 and Subordinated Claims are Class 9. *See* Plan, Article III, ¶ H(8) and (9).

58. In the Plan, HCM classified HMIT’s Class B Limited Partnership Interest and Class C Limited Partnership Interest (together, Class B/C Limited Partnership Interests) as Class 10, separately from that of the holders of Class A Limited Partnership Interests, which are Class 11 and include Dugaboy’s Limited Partnership Interest. *See* Plan, Article III, ¶ H(10) and (11).

59. According to the Plan, Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests are subordinate to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests. *See* Plan, Article I, ¶44.

60. In the Confirmation Order, the Court found that the Plan properly separately classified those equity interests because they represent different types of equity security interests in HCM and

different payment priorities pursuant to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended (the “Limited Partnership Agreement”). Confirmation Order, ¶36; Limited Partnership Agreement, §3.9 (Liquidation Preference).

61. The Court overruled objections to the Plan lodged by entities it deemed related to Mr. Dondero, including Dugaboy. In doing so, the Court acknowledged that Dugaboy has a residual ownership interest in HCM and therefore “technically” had standing to object to the Plan. *See* Confirmation Order, ¶¶ 17-18.

62. Based on the Debtor’s financial projections at the time of confirmation, however, the Court found that the plan objectors’ “economic interests in the Debtor appear to be extremely remote.” *Id.*, ¶ 19; *see also id.*, ¶ 17 (“the remoteness of their economic interests is noteworthy”).

63. The Plan went Effective (as defined in the Plan) on August 11, 2021, and HCM became the Reorganized Debtor (as defined in the Plan) on the Effective Date. *See* Notice of Occurrence of the Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. 2700].

64. The Plan created the Claimant Trust, which was established for the benefit of Claimant Trust Beneficiaries, which is defined to mean:

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests

*See* Plan, Article I, ¶27; *see also* Claimant Trust Agreement, Article I, 1.1(h).

65. Plaintiffs hold Contingent Claimant Trust Interests, which will vest into Claimant Trust Interests upon infeasible payment of Allowed Claims.

66. Depending on the realization of asset value less debts, Plaintiffs may become Claimant Trust Beneficiaries.

67. The Post Confirmation Quarterly Reports for the First Quarter of 2023 [Docket No. 3756 and 3757], show distributions of \$270,205,592 to holders of general unsecured claims, which is 68% of the total allowed general unsecured claims of \$397,485,568. This amount is far greater than was anticipated at the time of confirmation of the Plan. About \$277 million has been distributed to creditors when secured, priority and administrative creditors are also considered.

**B. Debtor Has Failed To Disclose Claimant Trust Assets**

68. Upon information and belief, the value of the estate, as held in the Claimant Trust, has changed markedly since Plan confirmation. Not only have many of the assets held by the estate fluctuated in value based on market conditions, with some increasingly in value dramatically, but Plaintiffs are aware that many of the major assets of the estate have been liquidated or sold since Plan confirmation, locking in increased value to the estate.

69. The estate is solvent and has always been solvent. Nonetheless, Mr. Seery has remained committed to maximizing professional fees and incentive fees by increasing the total claims amount to justify litigation to satisfy those inflated claims.

70. As noted above, by June of 2022, starting with \$125 million in cash, the estate liquidated other assets of over \$416 million, building a cash war chest of over \$541 million. Thus, with the remaining less-liquid assets, the total value of the estate's assets as of June 2022 was over \$600 million, excluding related party notes.

71. Contrasting those assets with the claims against the estate demonstrates that further collection of assets was (and is) unnecessary.

72. As set forth above, while the inflated face amount of the claims sold was \$365 million, the sale price was about \$150 million. The estate therefore easily had the resources to retire the claims for the sale amounts, leaving an operating business in the hands of its equity owners.

73. Instead, Mr. Seery liquidated estate assets at less-than-optimal prices, without competitive process, without including residual equity holders, and in all cases required strict non-disclosure agreements from the buyers to prevent any information flowing to the public, the residual equity, or the Court. This uncharacteristic secrecy enabled Mr. Seery and the professionals to maintain the delicate balance of keeping just enough assets to pay professionals and incentive fees but still maintain the pretense that further litigation was needed.

74. Each effort by Plaintiffs, Mr. Dondero and related companies to obtain information to assess whether interference was necessary to stop the continued looting has been vigorously opposed, and ultimately rejected by an apparently biased Court. Plaintiffs were unable to cause the Debtor to provide the most basic of reports, including Rule 2015 statements, and Plaintiffs' efforts to obtain even the most basic details regarding asset sales and professional fees have all been denied. Rather, such details are in the hands of a select few, such as the Oversight Board of the Claimant Trust.

75. The Plan requires the Claimant Trustee to determine the fair market value of the Claimant Trust Assets as of the Effective Date and to notify the applicable Claimant Trust Beneficiaries of such a valuation, as well as distribute tax information to Claimant Trust Beneficiaries as appropriate. *See* Plan, ¶Art. IV(B)(9).

76. But no like information regarding valuation of the Claimant Trust Assets is available to Plaintiffs as holders of Contingent Claimant Trust Interests, even though Plaintiffs, as contingent beneficiaries of a Delaware statutory trust, are entitled to financial information relating to the trust.

**C. Plaintiffs Are Kirschner Adversary Proceeding Defendants**

77. On October 15, 2021, Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust, commenced the Kirschner Adversary Proceeding against twenty-three defendants, including Plaintiffs, alleging various causes of action. *See Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust vs. James Dondero, et al.*, Adv. Pro. No. 21-03076-sgj, Adv. Proc. No. 21-03076, Docket No. 1 (as amended by Docket No. 158).

78. The Litigation Sub-Trust was established within the Claimant Trust as a wholly owned subsidiary of the Claimant Trust for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims, with any proceeds therefrom to be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries. *See Plan, Article IV, ¶ (B)(4).*

79. Any recovery from the Kirschner Adversary Proceeding will be distributed to Claimant Trust Beneficiaries.

80. Depending on the realization of asset value less debts, Plaintiffs may become Claimant Trust Beneficiaries.

81. The Litigation Sub-Trust is pursuing claims against Plaintiffs in the Kirschner Adversary Proceeding, which, if they become Claimant Trust Beneficiaries, would be the recipients of distributions of such recovery (less the cost of litigation). Therefore, Plaintiffs require the requested information in order to properly analyze and evaluate the claims asserted against

them in the Kirschner Adversary Proceeding and to determine whether those claims have any validity.

**FIRST CLAIM FOR RELIEF**  
**(Disclosures of Claimant Trust Assets and Request for Accounting)**

82. Plaintiffs repeat and re-allege the allegations in each of the foregoing paragraphs as though fully set forth herein.

83. Due to the lack of transparency into the assets of the Claimant Trust, Plaintiffs are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.

84. Certain information about the Claimant Trust Assets has already been provided to others, including Claimant Trust Beneficiaries and the Oversight Board for the Claimant Trust.

85. Information about the Claimant Trust Assets would help Plaintiffs evaluate whether settlement of the Kirschner Adversary Proceeding and other proceedings is feasible, which would further the administration of the bankruptcy estate, benefitting all parties in interest.

86. This Court specifically retained jurisdiction to ensure that distributions to Holders of Allowed Equity Interests are accomplished pursuant to the provisions of the Plan. *See* Plan, Article XI.

87. The Plan provides that distributions to Allowed Equity Interests will be accomplished through the Claimant Trust and Contingent Claimant Trust Interests. *See* Plan Article III, (H)(10) and (11).

88. The Defendants should be compelled to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, and details of all transactions that have occurred since the wall of silence was erected, and all liabilities.

**SECOND CLAIM FOR RELIEF**  
**(Declaratory Judgment Regarding Value of Claimant Trust Assets)**

89. Plaintiffs repeat and re-allege the allegations in each of the foregoing paragraphs as though fully set forth herein.

90. Once Defendants are compelled to provide information about the Claimant Trust assets, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust assets compared to the bankruptcy estate obligations.

91. If the value of the Claimant Trust assets exceeds the obligations of the estate, then several pending adversary proceedings aimed at recovering value for HCM's estate can be justly deemed unnecessary to pay creditors in full. As such, the pending adversary proceedings could be brought to a swift close, allowing creditors to be paid and the Bankruptcy Case to be brought to a close, ultimately stopping the bloodshed.

92. In addition, professionals associated with the estate—including but not limited to Mr. Seery, Pachulski, Development Specialists, Inc., Kurtzman Carson Consultants, Quinn Emanuel, Mr. Kirschner, and Hayward & Associates—are continuing to incur and receive millions of dollars a month in professional fees, thereby further eroding an estate that is either solvent or could be bridged by a settlement that would pay the spread between current assets and current allowed creditor claims. Fees for Pachulski range from \$460 an hour for associates to \$1,265 per hour for partners, and fees for Quinn Emanuel lawyers range from \$830 an hour for first year associate to over \$2100 per hour for senior partners. At these rates, depletion of the estate will occur rapidly.

**THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment and Determination Regarding Nature of Plaintiff's Interests)**

93. Plaintiffs repeat and re-allege the allegations in each of the foregoing paragraphs as though fully set forth herein.

94. In the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid, Plaintiffs seek a declaration and a determination that the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.<sup>6</sup>

95. Such a declaration and a determination by the Court would further assist parties in interest, such as Plaintiffs, to ascertain whether the estate is capable of paying all creditors in full and also paying some amount to residual interest holders, as contemplated by the Plan and the Claimant Trust Agreement.

WHEREFORE, Plaintiffs pray for judgment as follows:

- (i) On the First Claim for Relief, Plaintiffs seek an order compelling Defendants to disclose the assets currently held in the Claimant Trust, transactions completed that affect the Claimant Trust directly or indirectly, and all liabilities of the Claimant Trust;; and
- (ii) On the Second Claim for Relief, Plaintiffs seek a determination of the relative value of those assets in comparison to the claims of the Claimant Trust Beneficiaries; and
- (iii) On the Third Claim for Relief, Plaintiffs seek a determination that the conditions are such that all current Claimant Trust Beneficiaries could be paid in full, with

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<sup>6</sup> To be clear, Plaintiffs do not ask the Court to determine that they are Claimant Trust Beneficiaries or otherwise to convert their contingent interests into non-contingent interests. All of that must be done according to the terms of the Plan and the Claimant Trust Agreement.

such payment causing Plaintiffs' Contingent Claimant Trust Interests to vest into  
Claimant Trust Interests; and

(iv) Such other and further relief as this Court deems just and proper.

Dated: May 10, 2023

Respectfully submitted,

**STINSON LLP**

Deborah Deitsch-Perez

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

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

In Re:  
Highland Capital Management, L.P.

Dugaboy Investment Trust et al.

vs.

Highland Capital Management, L.P. et al.

Debtor(s)

Plaintiff(s)

Defendant(s)

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Case No.: 19-34054-sgj11

Chapter No.: 11

Adversary No.: 23-03038-sgj

**ORDER REGARDING ADVERSARY PROCEEDINGS TRIAL SETTING AND  
ALTERNATIVE SCHEDULING ORDER**

An adversary complaint is set for trial routinely at the time of its filing. Special settings or pretrial conferences may be scheduled by contacting the appropriate Courtroom Deputy.

**TRIAL** is set before the **Honorable Stacey G Jernigan** at **1100 Commerce Street, 14th Floor, Courtroom #1, Dallas, Texas 75242** the week of **November 20, 2023**. Docket call for this trial will be held on **November 13, 2023 at 01:30 pm at 1100 Commerce Street, 14th Floor, Courtroom #1, Dallas, Texas 75242**. A pretrial conference shall be scheduled by the parties at least seven (7) calendar days prior to trial docket call in a complex adversary proceeding if the parties anticipate that trial will exceed one day or if there are preliminary matters that should be addressed by the Court prior to the commencement of trial.

**PART I: INSTRUCTIONS**

1. Plaintiff is responsible for ensuring that proper service is provided to each defendant. The Clerk shall issue one original summons, which shall be conformed by the plaintiff for service on multiple defendants. Federal Bankruptcy Rule 7004(e) requires you to serve the fully completed **SUMMONS** form and a copy of the **COMPLAINT** on each defendant within seven (7) days of issuance. In addition, the Court also directs that this **ORDER be served with the SUMMONS and COMPLAINT**.
2. Plaintiff shall file a **RETURN** on the **SUMMONS** with a **CERTIFICATE OF SERVICE** that provides the name and address of each party served and the manner of service.
3. If a trial setting is passed for settlement at trial docket call and no written request is filed to retain the case on the Court's docket, an automatic Dismissal Without Prejudice shall be entered on or after four (4) weeks. The Court's Trial Calendar is available on the court's web site at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov).

**PART II: GENERAL PROVISIONS GOVERNING DISCOVERY**

1. Unless otherwise ordered by the Court, the disclosures required by Federal Bankruptcy Rule 7026(a) shall be made within fourteen (14) days of the entry of a scheduling order, including the Alternative Scheduling Order contained in Part III below (which shall become effective on the forty-sixth day following the entry of this Order).
2. Unless the parties agree or the Court orders otherwise, Federal Bankruptcy Rule 7026(f) requires that parties shall confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Federal Bankruptcy Rule 7026(a)(1), to develop a proposed discovery plan, and to submit a proposed scheduling order. The parties shall confer with each other regarding these matters within thirty (30) days of the service of the Summons unless the Court orders otherwise.
3. During such conference, the parties may agree to waive the requirement of submitting their own proposed scheduling order and may follow the terms and deadlines contained in the Alternative Scheduling Order set forth in Part III below (the "Alternative Scheduling Order"). If the parties do not submit a proposed scheduling order or do not schedule a status conference with the Court to discuss the provisions and deadlines of a scheduling order within forty-five days of the filing of this adversary proceeding, then the parties are deemed to have consented to the terms of the Alternative Scheduling Order.

**PART III: ALTERNATIVE SCHEDULING ORDER**

The Court directs compliance with the following schedule:

1. Discovery must be completed forty-five (45) days prior to Docket Call. The names and addresses of experts must be exchanged sixty (60) days prior to Docket Call.
2. A Joint Pretrial Order in compliance with Local District Court Rule 16.4 shall be filed, served, and uploaded for Court entry seven (7) days prior to Docket Call. All counsel (or a pro se party) are responsible for preparing the Joint Pretrial Order, which shall contain the following: (a) a summary of the claims and defenses of each party; (b) a statement of stipulated facts; (c) a list of the contested issues of fact; (d) a list of contested issues of law; (e) an estimate of the length of trial; (f) a list of additional matters which would aid in the disposition of the case; and (g) the signature of each attorney (or pro se party).
3. Each exhibit shall be marked with an exhibit label. Except for impeachment documents, all exhibits, along with a list of witnesses to be called, shall be exchanged with opposing counsel (or pro se party) fourteen (14) days prior to Docket Call. Each party shall also file a list of exhibits and witnesses fourteen (14) days prior to Docket Call. All exhibits not objected to in writing by Docket Call shall be admitted into evidence at trial without further proof, except for objections to relevance. Written objections to exhibits will be taken up either at the beginning or during the course of the actual trial or at any pretrial conference.
4. Written Proposed Findings of Fact and Conclusions of Law shall be filed seven (7) days prior to Docket Call. Trial briefs shall be filed addressing contested issues of law seven (7) days prior to Docket Call.
5. Unless otherwise directed by the Presiding Judge, all dispositive motions must be heard no later than fourteen (14) days prior to Docket Call. Accordingly, all dispositive motions must be filed no later than forty-five (45) days prior to Docket Call, unless the Court modifies this deadline.
6. All parties and counsel must certify to full compliance with this Order at Docket Call. If a resetting is allowed by the Court, the plaintiff or plaintiff's attorney shall notify all other parties and shall file with the Clerk a certificate of service indicating the manner, date, and to whom notice was given.
7. If the case is reset, all the deadlines in Part III nos. 1 through 5 will be shifted to the newly scheduled Docket Call date in the absence of a contrary Court order.
8. Sanctions may be imposed for failure to comply with this Order.

DATED: 5/11/23

FOR THE COURT:  
Robert P. Colwell, Clerk of Court

by: /s/Michael Edmond, Deputy Clerk

002642



This stipulation (the “Stipulation”) is made and entered into between Highland Capital Management, L.P., the reorganized debtor in the above-referenced bankruptcy case (“Highland”), and the Highland Claimant Trust (the “Trust,” and together with Highland, the “Defendants”), on the one hand, and The Dugaboy Investment Trust (“Dugaboy”) and Hunter Mountain Investment Trust (“HMIT,” and together with Dugaboy, the “Plaintiffs,” and collectively with the Defendants, the “Parties”), on the other hand, by and through their respective undersigned counsel.

### **RECITALS**

WHEREAS, on April 20, 2023, James Dondero and certain of his affiliates (collectively, the “Dondero Parties”) filed their *Motion to Stay and to Compel Mediation* [Bankr. Docket No. 3752] (the “Mediation Motion”).

WHEREAS, on May 10, 2023, Plaintiffs commenced the above-captioned adversary proceeding (the “Action”) against Highland and the Trust by filing their *Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* [Docket No. 1] (the “Complaint”).

WHEREAS, on August 2, 2023, the Mediation Motion was granted, in part [Bankr. Docket No. 3897] (the “Mediation Order”). Pursuant to the Mediation Order, the Action was stayed until the Mediator<sup>2</sup> filed his Report with the Court stating whether a settlement has been reached.

WHEREAS, on November 7, 2023, the Report was filed with the Court stating that no settlement was reached. *See Joint Notice of Mediation Report* [Bankr. Docket No. 3964].

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<sup>2</sup> Capitalized terms not defined herein shall take on the meanings ascribed thereto in the Mediation Order.

WHEREAS, in compliance with the Mediation Order, and subject to the Bankruptcy Court's approval, the Parties have conferred in good faith to adopt a scheduling order (the "Proposed Joint Scheduling Order"), as specifically set forth below.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval of this Stipulation by the Court, it shall be SO ORDERED:

1. The Parties agree to the following Proposed Joint Scheduling Order:

<i>Proposed Joint Scheduling Order</i>	
<u>Event</u>	<u>Deadline</u>
1. Defendants File their Motion to Dismiss Complaint	November 22, 2023
2. Plaintiffs File their Response to Motion to Dismiss	December 22, 2023
3. Defendants File their Reply in Support of Motion to Dismiss	January 12, 2024
4. Hearing on Motion to Dismiss (via Webex)	On or after January 22, 2024

2. If approved by the Court, the Proposed Joint Scheduling Order shall only be modified in a writing signed by the Parties or upon the entry of an order of the Court entered upon notice to the Parties.

3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Stipulation.

*[Remainder of Page Intentionally Blank]*

Dated: November 13, 2023

**PACHULSKI STANG ZIEHL & JONES LLP**

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John A. Morris (NY Bar No. 2405397)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed November 20, 2023

*Stacy G. C. Gammie*  
United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	)	Adv. Pro. No. 23-03038-sgj
Plaintiffs,	)	
vs.	)	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	)	
Defendants.	)	

**ORDER APPROVING  
STIPULATION AND PROPOSED SCHEDULING ORDER**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Having considered the *Stipulation and Proposed Scheduling Order* [Docket No. 7] (the “Stipulation”), a copy of which is attached as **Exhibit A**, filed by Highland Capital Management, L.P., the reorganized debtor in the above-referenced bankruptcy case (“Highland”), and the Highland Claimant Trust (the “Trust,” and together with Highland, the “Defendants”) on the one hand, and The Dugaboy Investment Trust (“Dugaboy”) and Hunter Mountain Investment Trust (“HMIT,” and together with Dugaboy, the “Plaintiffs,” and collectively with the Defendants, the “Parties”) on the other hand,

**IT IS HEREBY ORDERED THAT:**

1. The Stipulation is **APPROVED**.
2. The Stipulation shall become effective immediately upon entry of this Order.
3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Stipulation and this Order.

###End of Order###

**EXHIBIT A**



This stipulation (the “Stipulation”) is made and entered into between Highland Capital Management, L.P., the reorganized debtor in the above-referenced bankruptcy case (“Highland”), and the Highland Claimant Trust (the “Trust,” and together with Highland, the “Defendants”), on the one hand, and The Dugaboy Investment Trust (“Dugaboy”) and Hunter Mountain Investment Trust (“HMIT,” and together with Dugaboy, the “Plaintiffs,” and collectively with the Defendants, the “Parties”), on the other hand, by and through their respective undersigned counsel.

### **RECITALS**

WHEREAS, on April 20, 2023, James Dondero and certain of his affiliates (collectively, the “Dondero Parties”) filed their *Motion to Stay and to Compel Mediation* [Bankr. Docket No. 3752] (the “Mediation Motion”).

WHEREAS, on May 10, 2023, Plaintiffs commenced the above-captioned adversary proceeding (the “Action”) against Highland and the Trust by filing their *Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* [Docket No. 1] (the “Complaint”).

WHEREAS, on August 2, 2023, the Mediation Motion was granted, in part [Bankr. Docket No. 3897] (the “Mediation Order”). Pursuant to the Mediation Order, the Action was stayed until the Mediator<sup>2</sup> filed his Report with the Court stating whether a settlement has been reached.

WHEREAS, on November 7, 2023, the Report was filed with the Court stating that no settlement was reached. *See Joint Notice of Mediation Report* [Bankr. Docket No. 3964].

---

<sup>2</sup> Capitalized terms not defined herein shall take on the meanings ascribed thereto in the Mediation Order.

WHEREAS, in compliance with the Mediation Order, and subject to the Bankruptcy Court's approval, the Parties have conferred in good faith to adopt a scheduling order (the "Proposed Joint Scheduling Order"), as specifically set forth below.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval of this Stipulation by the Court, it shall be SO ORDERED:

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1. Defendants File their Motion to Dismiss Complaint	November 22, 2023
2. Plaintiffs File their Response to Motion to Dismiss	December 22, 2023
3. Defendants File their Reply in Support of Motion to Dismiss	January 12, 2024
4. Hearing on Motion to Dismiss (via Webex)	On or after January 22, 2024

2. If approved by the Court, the Proposed Joint Scheduling Order shall only be modified in a writing signed by the Parties or upon the entry of an order of the Court entered upon notice to the Parties.

3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Stipulation.

*[Remainder of Page Intentionally Blank]*

Dated: November 13, 2023

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
Reorganized Debtor.	)	Case No. 19-34054-sgj11
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	)	
Plaintiffs,	)	Adv. Pro. No. 23-03038-sgj
vs.	)	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	)	
Defendants.	)	

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**THE HIGHLAND PARTIES' MOTION TO DISMISS COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE ASSETS OF THE HIGHLAND CLAIMANT TRUST AND (II) DETERMINE (A) RELATIVE VALUE OF THOSE ASSETS, AND (B) NATURE OF PLAINTIFFS' INTERESTS IN THE CLAIMANT TRUST**

Highland Capital Management, L.P. ("Highland" or the "Debtor," as applicable), and the Highland Claimant Trust (the "Claimant Trust," and together with Highland, the "Highland Parties"), the defendants in the above-captioned adversary proceeding, by and through their undersigned counsel, file this motion (the "Motion") seeking entry of an order dismissing the *Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* [Docket No. 1] (the "Complaint") filed by The Dugaboy Investment Trust (Dugaboy) and Hunter Mountain Investment Trust ("HMIT"). In support of its Motion, the Highland Parties state as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. 157(b).
3. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

**RELIEF REQUESTED**

4. The Highland Parties request that the Court issue the proposed form of order attached as **Exhibit A** (the "Proposed Order") pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7012 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

5. For the reasons set forth more fully in the Highland Parties' *Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint* (the "Memorandum of Law") filed contemporaneously with this Motion and in accordance with Rule 7007-1(g) of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas*, the Highland Parties request that the Court: (a) dismiss the Complaint in its entirety and (b) grant the Highland Parties such other and further relief as the Court deems just and proper under the circumstances.

6. Based on the arguments contained in the Memorandum of Law, the Highland Parties are entitled to the relief requested herein as set forth in the Proposed Order.

7. Notice of this Motion has been provided to all parties. The Highland Parties submit that no other or further notice need be provided.

WHEREFORE, the Highland Parties respectfully request that the Court (i) enter the Proposed Order substantially in the form annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant the Highland Parties such other and further relief as the Court may deem proper.

Dated: November 22, 2023

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**EXHIBIT A**

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

_____	)	
In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj 11
	)	
Reorganized Debtor.	)	
_____	)	
DUGABOY INVESTMENT TRUST and	)	
HUNTER MOUNTAIN INVESTMENT TRUST,	)	Adv. Pro. No. 23-03038-sgj
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	
and HIGHLAND CLAIMANT TRUST,	)	
	)	
Defendants.	)	
_____	)	

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**ORDER GRANTING MOTION TO DISMISS**

Before the Court is the *Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust* [Docket No. \_\_\_] (the "Motion"). Having considered (a) the Motion and (b) the Highland Parties' *Memorandum of Law in Support of Highland Capital Management, L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint* [Docket No. \_\_\_] (the "Memorandum of Law"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; and this Court having found that the Highland Parties' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

###End of Order###

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Highland Capital Management, L.P. (“Highland” or the “Debtor,” as applicable), and the Highland Claimant Trust (the “Claimant Trust,” and together with Highland, the “Highland Parties”), the defendants in the above-captioned adversary proceeding, hereby submit this memorandum of law in support of their *Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interest in the Claimant Trust* (the “Motion”) seeking to dismiss the above-captioned action (the “Action”).

### I. PRELIMINARY STATEMENT<sup>2</sup>

1. The Complaint should be dismissed in its entirety. Pursuant to Rule 12(b)(1), this Court lacks subject matter jurisdiction over the Action because the Claims are either moot or seek impermissible advisory opinions. Even if the Court had jurisdiction (and it does not), the Claims should be dismissed under Rule 12(b)(6) because they fail to state claims as a matter of law.

2. Under the express terms of the CTA and the Plan, holders of Contingent Trust Interests are not “Claimant Trust Beneficiaries” and have no rights, including information rights, unless and until their contingent, inchoate interests vest. Despite holding only unvested Contingent Trust Interests with no rights in the Claimant Trust, Plaintiffs stubbornly seek “financial information” regarding the Claimant Trust Assets and specifically request: (a) an accounting of the Claimant Trust Assets, (b) a determination as to the value of those assets compared to liabilities, and (c) a determination whether Plaintiffs’ Contingent Trust Interests “will vest.”

3. Count One, which seeks an accounting of the assets and liabilities of the Claimant Trust, has been rendered moot by the Pro Forma Adjusted Balance Sheet filed in July 2023 and other publicly-available information, which discloses the very information demanded. The relief

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<sup>2</sup> Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

sought in Count Three, namely, a determination as to whether Plaintiffs' Contingent Trust Interests are "likely to vest," is moot, seeks an impermissible advisory opinion, and is barred by collateral estoppel. In September 2023, four months after the Complaint was filed, this Court found that whether the Contingent Trust Interests might someday vest is dependent on a multitude of unknown and unknowable factors, for example, the amount of senior indemnification expenses that must be reserved for and ultimately paid by the Claimant Trust. Based, in part on those unknown senior expenses, this Court determined that the Contingent Trust Interests were "not in the money." This Court lacks jurisdiction to render an opinion on Count Three and, to the extent that it could, it already has and Plaintiffs are collaterally estopped from re-litigating this issue. For the same reasons, there is no declaratory relief available to Plaintiffs that has not already been addressed in the Court's prior ruling.

4. Even if the Court had subject matter jurisdiction over the Claims, the Complaint fails as a matter of law under Rule 12(b)(6). Plaintiffs' equitable claim (Count One) is foreclosed by the plain and unambiguous terms of the CTA, the Plan, and this Court's prior orders. Plaintiffs, as holders of Contingent Trust Interests, have no rights—including information rights—under the CTA. Under the circumstances, equity cannot abrogate the terms of that agreement or be used to create non-existent rights or extra-contractual duties, such as those relating to the disclosure of financial information or an accounting. This is especially so when Plaintiffs and their affiliates have unclean hands as vexatious adversaries to the entity against who they claim to seek equity.<sup>3</sup> Plaintiffs' claims for declaratory relief (Counts Two and Three) also fail as a matter of law because

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<sup>3</sup> In addition to the numerous actions in which the Plaintiffs and their affiliates have attacked the Highland Parties or failed to honor their obligations to the Highland Parties, plaintiff HMIT is a defendant in an action on a note owed to Highland with current principal and interest owed in excess of \$98 million, discussed *infra*.

there is no cognizable underlying claim. For the reasons herein and discussed further below, the Complaint should be dismissed.

## II. RELEVANT BACKGROUND

### A. The Bankruptcy Case

5. On October 16, 2019 (the “Petition Date”), Highland filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Case”). As of the Petition Date, Highland had three classes of limited partnership interests (Class A, Class B, and Class C). See Disclosure Statement [Docket No. 1473], ¶ F(4). The Class A interests were held by The Dugaboy Investment Trust (“Dugaboy”),<sup>4</sup> Mark Okada’s family trusts, and Strand Advisors, Inc. The Class B and C interests were held by Hunter Mountain Investment Trust (“HMIT”). *Id.* On January 9, 2020, an independent board of directors, which included James P. Seery, Jr., was appointed to manage Highland’s Bankruptcy Case and estate. [Docket No. 339]. Mr. Seery was appointed Highland’s Chief Executive Officer and Chief Restructuring Officer in July 2020. [Docket No. 854].

### B. The Plan

6. On February 22, 2021, the Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the “Confirmation Order”), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Bankr. Docket No. 1943-1] (the “Plan”). The Plan became effective on August 11, 2021 [Docket No. 2700] (the “Effective Date”). Pursuant to the Plan:

- General Unsecured Claims were classified as Class 8 and Subordinated Claims were classified as Class 9.

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<sup>4</sup> Dugaboy is James Dondero’s family trust.

- HMIT’s Class B Limited Partnership Interest and Class C Limited Partnership Interest were classified as Class 10.
- Class A Limited Partnership Interests, including Dugaboy’s, were classified as Class 11.
- The Claimant Trust, a Delaware statutory trust, was established pursuant to that certain *Claimant Trust Agreement*, effective as of August 11, 2021 (the “CTA”),<sup>5</sup> for the benefit of “Claimant Trust Beneficiaries;”<sup>6</sup>
- Holders of allowed general and subordinated unsecured Claims (*i.e.*, Class 8 and 9) received beneficial interests in the Claimant Trust (collectively, the “Trust Interests”) and became “Claimant Trust Beneficiaries;” and
- Holders of the Debtor’s prepetition partnership interests (*i.e.*, Class 10 and 11) were allocated unvested contingent interests (the “Contingent Trust Interests”) in the Claimant Trust that would vest if, and only if, the Claimant Trustee certifies that all Claimant Trust Beneficiaries (*i.e.*, Class 8 and 9) have been paid in full, Class 8 has received post-petition interest, and all disputed claims in Class 8 and 9 have been resolved.

(See generally Plan Art. III, IV.)

**C. Information Rights Under the CTA**

7. By design, the clear terms of the CTA limit information rights. Section 3.12(a) of the CTA provides that the Claimant Trustee has no duty to provide an accounting of the Claimant Trust Assets to any party, including Claimant Trust Beneficiaries. CTA, § 3.12(a) (“Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting ....”).

8. Section 3.12(b) of the CTA provides limited information rights solely to “Claimant Trust Beneficiaries”:

The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-

<sup>5</sup> All capitalized terms used but not defined herein have the meanings given to them in the CTA.

<sup>6</sup> The CTA was expressly incorporated into and is a part of the Plan. Confirmation Order ¶ 25; Plan Art. IV, § J. The final form of the CTA was filed with the Court as Docket No. 1811-2 as modified by Docket No. 1875-4.

determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

CTA, § 3.12(b).

9. Nothing in the CTA or the Plan grants any other information rights, and, in fact, the CTA is clear that there are no information rights outside those in Section 3.12(b). *See* CTA, § 5.10(a) ("The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein)"). Thus, the only entities with information rights under the Plan are "Claimant Trust Beneficiaries," and those rights (a) are limited, (b) do not include rights to asset or subsidiary level information, and (c) can be further limited by the Claimant Trustee as appropriate to "maintain confidentiality."

10. Under the express terms of the Plan, the CTA, and this Court's prior orders, the "Claimant Trust Beneficiaries"<sup>7</sup> are the holders of Allowed Claims in Class 8 and Class 9. *See* CTA, § 1.1(h); Plan Art. I.B.27.<sup>8</sup> HMIT holds Class 10 interests and Dugaboy holds Class 11 interests, and therefore, neither Plaintiff is a "Claimant Trust Beneficiary." Instead, Plaintiffs hold

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<sup>7</sup> "Claimant Trust Beneficiaries" are defined as:

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

*See, e.g.*, CTA, § 1.1(h).

<sup>8</sup> *See also In re Highland Cap. Mgt., L.P.*, 19-34054-SGJ-11, 2023 WL 5523949, at \*35 (Bankr. N.D. Tex. Aug. 25, 2023), discussed further *infra*.

unvested “Contingent Trust Interests.” *See, e.g.*, Plan, Art. I.B.44; CTA, §§ 1.1(h), 5.1(c). Contingent Trust Interests “shall not have any rights under” the CTA, and holders of such interests will not “be deemed ‘Beneficiaries’” “unless and until” they vest in accordance with the Plan and CTA. *Id.* Specifically, under the CTA, Plaintiffs’ Contingent Trust Interests in the Claimant Trust will *not* vest and Plaintiffs will have *no* rights under the CTA unless and until (a) all Class 8 and Class 9 Claims are paid indefeasibly in full with interest, (b) all disputed claims are resolved, and (c) the Claimant Trustee certifies as much to this Court. *Id.* Class 8 and Class 9 Claims cannot be paid until indemnification claims are satisfied.<sup>9</sup> It is indisputable that Plaintiffs’ Contingent Trust Interests have not vested under the terms of the Plan and the CTA. *See Highland Cap.*, 2023 WL 5523949, at \*35. Plaintiffs are not “Claimant Trust Beneficiaries” and have no information rights.

**D. Dugaboy Files the Valuation Motion**

11. On June 30, 2022, Dugaboy filed its *Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382] (the “Initial Valuation Motion”), seeking “a determination by this Court of the current value of the estate and an accounting of the assets currently held by the Claimant Trust and available for distribution to creditors.” Thereafter, on September 21, 2022, Dugaboy filed a supplemental motion [Docket No. 3533] (the “Supp. Valuation Motion” and, together with the Original Valuation Motion, the “Valuation Motion”). Therein, Dugaboy requested that the Court enter “an order: (i) finding that Dugaboy has standing in these bankruptcy proceedings under 11 U.S.C. § 1109(b), Delaware trust law, and Article III of the United States Constitution; and (ii) setting an evidentiary hearing to ascertain the assets

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<sup>9</sup> *See, e.g.*, CTA Art. 6.1 (providing that distributions to Claimant Trust Beneficiaries are junior to the Claimant Trust’s expenses, including, among other things, amounts “necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses,” which include indemnification costs). This priority of payment under the Plan and CTA was upheld by the Fifth Circuit when affirming this Court’s order authorizing the creation of the indemnity sub-trust, the purpose of which was to reserve or retain any cash reasonably necessary to satisfy contingent liabilities. *See In the Matter of Highland Cap. Mgt., L.P.*, 57 F4th 494, 502 (5th Cir 2023).

currently available for distribution to allowed claimants, to determine the current value of those assets, and to determine whether there is a potential for settling the estate now ....” The Valuation Motion was supported by HMIT. [Docket No. 3467]. Highland objected to the Valuation Motion. [Docket No. 3465].

12. On November 15, 2022, the Court held a status conference, during which the Court expressed concerns about whether the Valuation Motion should be filed as an adversary proceeding since it sought equitable relief. On December 7, 2022, after the parties submitted briefing on this issue, [see Docket Nos. 3637, 3638, 3639], the Court issued its order [Docket No. 3645] (the “Valuation Order”), in which it found that an adversary proceeding was necessary with regard to the relief sought in the Valuation Motion. The Court explained that “the essence of the Dugaboy Value Motions is a request for an accounting,” which constitutes “equitable relief that does not appear to be provided for in the confirmed chapter 11 plan.” *Id.* at 4. The Court further found that “Dugaboy and HMIT have not pointed to any provision of the CTA that establishes a right to an accounting,” and “[i]t would appear that Dugaboy and HMIT may be frustrated that they did not negotiate or obtain the same oversight rights as the actual Claimant Trust Beneficiaries in the Plan and CTA.” Valuation Order at 5 (quoting CTA §§ 3.12(a), (b)).

**E. Plaintiffs File the Complaint**

13. On May 10, 2023, Plaintiffs commenced this Action against Highland and the Claimant Trust by filing their complaint [Adv. Pro. No. 23-03038, Docket No. 1] (the “Complaint”). In their Complaint, Plaintiffs seek an equitable accounting of the Claimant Trust Assets so they can determine if their Contingent Claimant Trust Interests “are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.”

14. In their first count (“Count One”), Plaintiffs request an accounting “regarding the Claimant Trust Assets, including the amount of cash and the remaining non-cash assets, and details

of all transactions that have occurred since the wall of silence was erected, and all liabilities.” Plaintiffs maintain, *inter alia*, that “[d]ue to the lack of transparency into the assets of the Claimant Trust, Plaintiffs are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.” Compl. ¶¶ 82-88.<sup>10</sup>

15. In their second count (“Count Two”), Plaintiffs seek a declaratory judgment regarding the value of the Claimant Trust Assets. Plaintiffs specifically maintain that “[o]nce Defendants are compelled to provide information about the Claimant Trust Assets, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations.” Compl. ¶ 90.

16. In their third count (“Count Three,” and collectively with Count One and Count Two, the “Claims”), Plaintiffs seek a declaration and determination that “[i]n the event that the Court determines that the Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid ... the conditions are such that their Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries.” Compl. ¶ 94.

#### **F. The Court Denies HMIT Leave to File Adversary Proceeding**

17. Around the same time, HMIT separately filed its *Emergency Motion for Leave to File Verified Adversary Proceeding* [Docket No. 3699], which was later supplemented and

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<sup>10</sup> Plaintiffs allege that Highland “failed and refused to file quarterly 2015.3 reports, leaving stakeholders, including Plaintiffs, in the dark about the value of the estate and the mix of assets it held, bought or sold.” Compl. ¶ 41. Plaintiffs’ allegations about the lack of transparency in the Bankruptcy Case is tired and purposefully misleading. ***Highland has complied with every single pre- and post-Effective Date disclosure obligation***—except for the Rule 2015.3 disclosure. The Fifth Circuit has denied Dugaboy’s appeal of the denial of its post-confirmation motion to compel compliance with Rule 2015.3, (*see* Case No. 22-10831, Document No. 46), and this Court has found that “it is not as though the Claimant Trustee is operating ‘under the radar’” (Valuation Order at 5). Moreover, as previously disclosed in this Court, the failure to file the 2015.3 reports during the case was a direct result of actions of persons who work for Plaintiffs and their affiliates, and in any event, at all time Plaintiffs’ control person had full access to the information they cry about. Nevertheless, Plaintiffs continue with their baseless allegations about the lack of transparency in this case.

modified [Docket Nos. 3760, 3815, and 3816] (collectively, the “Motion for Leave”).<sup>11</sup> In the Motion for Leave, HMIT sought leave to sue Highland, Mr. Seery, Stonehill, and Farallon<sup>12</sup> falsely alleging both direct and derivative claims for “insider trading” and breach of fiduciary duty (the “Proposed Claims”).

18. On August 25, 2023, this Court issued its order denying the Motion for Leave on multiple grounds. *See Highland Cap.*, 2023 WL 5523949 (the “Order Denying Leave”). In the Order Denying Leave, the Court found that, *inter alia*: (a) HMIT was not a “Claimant Trust Beneficiary” and not a “beneficial owner” of the Claimant Trust; (b) HMIT should not be treated as a “Claimant Trust Beneficiary” after “considering the current value of the Claimant Trust Assets ...”; (c) HMIT held “only an *unvested* contingent interest in the Claimant Trust,” and “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple;” and (d) the Court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested ...” *Id.* at 35.

**G. Highland Files the Pro Forma Adjusted Balance Sheet Ahead of Mediation in July 2023**

19. On April 20, 2023, James Dondero and certain of his controlled affiliates (collectively, the “Dondero Parties”) filed their *Motion to Stay and to Compel Mediation* [Docket No. 3752] (the “Mediation Motion”), which was granted, in part, on August 2, 2023, [Docket No. 3897].<sup>13</sup> On July 6, 2023, in furtherance of mediation and in compliance with an agreed-upon Court order [Docket 3870], Highland filed a *pro forma* adjusted balance sheet [Docket No. 3872] (the “Pro Forma Adjusted Balance Sheet”). The Pro Forma Adjusted Balance Sheet disclosed a

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<sup>11</sup> Each version of the Motion for Leave attached a proposed complaint [Docket Nos. 3699-1, 3760-1, 3815-1, 3816-1] (the last version, the “Proposed Complaint”).

<sup>12</sup> Stonehill and Farallon refer to, respectively, Stonehill Capital Management, LLC and Farallon Capital Management, LLC.

<sup>13</sup> The mediation did not result in a settlement. *See* Docket No. 3964.

point-in-time \$152 million in assets (of which only \$37 million was cash or restricted cash) and \$130 million in liabilities for a total equity value of \$22 million, which, even assuming the equity value could be distributed (and it cannot be), is well short of the \$126 million needed to pay Allowed Class 8 and Class 9 claims (exclusive of interest).

20. The information disclosed on the Pro Forma Adjusted Balance Sheet was consistent with information that had already been disclosed in the Bankruptcy Case as of April 2023, [*see* Bankr. Docket Nos. 3756 and 3757] (the “Post-Confirmation Reports”), and through these disclosures should have resolved any good faith dispute around receiving sufficient information with which to make a global settlement offer. These enhanced Post-Confirmation Reports were publicly filed to provide interested parties substantially more information than was required. *See, e.g.*, Docket No. 3757 at 13-15 (Addendum showing (i) “Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary;” (ii) liabilities, including remaining disputed/expunged or pending claims, (iii) disbursements to Classes 8 and 9, and (iv) “Remaining investments, notes, and other assets”).

#### **H. HMIT Seeks Reconsideration of Order Denying Leave Based on the Pro Forma Adjusted Balance Sheet**

21. On September 8, 2023, HMIT filed its motion for reconsideration of the Order Denying Leave [Docket No. 3905] (the “Motion to Reconsider”), falsely and misleadingly contending that the Pro Forma Adjusted Balance Sheet (a) provided an accounting of the Claimant Trust Assets and (b) proved that (i) the value of the Claimant Trust Assets exceeded liabilities and (ii) HMIT was “in the money” and (c) its interests were likely to vest and that HMIT therefore had standing as a “Claimant Trust Beneficiary.” On October 6, 2023, the Court denied the Motion to Reconsider [Docket No. 3936] (the “Order Denying Reconsideration”). The Court found that, in pertinent part, the Balance Sheet did not “demonstrate that HMIT’s contingent interest is ‘in the

money,” noting that “HMIT does not give proper attention to the voluminous supplemental notes” in the Balance Sheet that are “integral to understanding the numbers therein.” *Id.* at 3 (citing Notes 5 and 6 of the Balance Sheet which show that Highland will operate at an “operating loss prospectively,” and that the administrative expenses and legal fees continue to deplete assets, among other things). The Court also found that the Balance Sheet did not constitute “newly discovered evidence” because it did not contain information that was materially different from the information disclosed on the Post-Confirmation Reports, filed three months earlier. *Id.* at 2-3.

### III. ARGUMENT

#### A. The Court Does Not Have Subject Matter Jurisdiction Over Counts One and Three

22. The Court does not have subject matter jurisdiction to adjudicate Counts One and Three. Counts One and Three are moot, and Count Three impermissibly seeks an advisory opinion.

##### 1. Legal Standard

23. A motion under Rule 12(b)(1) must be considered before any motion on the merits because subject matter jurisdiction is required to determine the validity of any claim. *See Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994). “Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam). “The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.” *Id.* “A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass'n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (internal quotations omitted).

**2. Counts One and Three are Moot**

**i. Count One is Moot in Light of the Pro Forma Adjusted Balance Sheet**

24. Count One is moot in light of the Pro Forma Adjusted Balance Sheet and must be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). For a court to have subject matter jurisdiction over a suit, a “controversy must remain live throughout the suit’s existence.” *Bazzrea v. Mayorkas*, 3:22-CV-265, 2023 WL 3958912, at \*3 (S.D. Tex. June 12, 2023). “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversary’ for purpose of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) (internal quotations omitted).

25. Here, the issue presented in Count One is no longer “live.” In Count One, Plaintiffs seek (a) “information regarding the Claimant Trust assets,” including the amount of assets and liabilities, so that (b) Plaintiffs can “determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.” Compl. ¶¶ 82-88. As discussed *supra*, the Pro Forma Adjusted Balance Sheet provides this very information. It shows the value of the Claimant Trust Assets, the Claimant Trust’s liabilities, and the potential equity value available for Claimant Trust Beneficiaries (assuming all Claimant Trust Assets are liquidated at current valuations and liabilities are fixed). HMIT admitted as much in its Motion to Reconsider when it specifically (but incorrectly) maintained that, based on the assets and liabilities shown on the Pro Forma Adjusted Balance Sheet, “[HMIT’s] *Contingent Claimant Trust Interest will vest, or put colloquially, [HMIT] is ‘in the money.’*” Motion to Reconsider ¶¶ 5-8 (emphasis added).<sup>14</sup> The Post-

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<sup>14</sup> Although Plaintiffs have effectively admitted the Pro Forma Adjusted Balance Sheet moots their requested relief, as this Court is aware, the current value of the Claimant Trust Assets does not dictate when or if Plaintiffs’ Contingent Trust Interests will ever vest. Whether and when Contingent Trust Interests may someday vest depends upon the satisfaction of the conditions set forth in the CTA and the Plan, and this Court “does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested ...” regardless of whether the value of the pro forma assets exceeds the pro forma value of the liabilities on a particular date. Order Denying Leave at \*35.

Confirmation Reports, filed prior to the Complaint in filed in April 2023, similarly disclose the financial information requested in Count One, including, *inter alia*, the cash and the identification of remaining assets.

26. The Pro Forma Adjusted Balance Sheet and Post-Confirmation Reports have thus eliminated the “actual controversy” at the core of Count One, and there is no conceivable relief available to Plaintiffs through this claim that has not already been provided. Count One is therefore moot. *See Bazzrea*, 2023 WL 3958912, at \*4 (finding plaintiffs’ claims moot where events that occurred after the complaint was filed “eliminated the actual controversy—the court cannot provide effectual relief and thus the plaintiffs’ claims are moot.”) Accordingly, Plaintiffs have not met their burden to establish that the Court has subject matter jurisdiction over Count One, and it should be dismissed under Rule 12(b)(1).

ii. **Count Three is Moot Because the Court has Already Held that Contingent Claimant Interests are Not “In the Money”**

27. Count Three, seeking a declaration regarding whether Plaintiffs’ Contingent Trust Interests “are likely to vest into Claimant Trust Interests, making them Claimant Trust Beneficiaries,” Compl. ¶ 94, is moot because the Court already decided this issue. As discussed above, in its Motion to Reconsider, HMIT incorrectly argued that the Pro Forma Adjusted Balance Sheet showed that HMIT’s Contingent Trust Interests were “in the money” and likely to vest, rendering HMIT a “Claimant Trust Beneficiary.” In its Order Denying Reconsideration, the Court found that Contingent Trust Interests are not “in the money,”<sup>15</sup> and that HMIT is, therefore, not a Claimant Trust Beneficiary. As the Court explained, Plaintiffs’ reliance on the assets and liabilities disclosed on the Pro Forma Adjusted Balance Sheet in support of its argument that its interests

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<sup>15</sup> Although the Court’s finding related to HMIT’s Contingent Trust Interest, this ruling applies equally to Dugaboy, because both Plaintiffs both hold Contingent Trust Interests.

were “likely to vest” demonstrated a fundamental misunderstanding of the Pro Forma Adjusted Balance Sheet and the vesting mechanics in the CTA. Again, under the CTA, Contingent Trust Interests vest only if, among other things, Class 8 and Class 9 are paid in full. And as the Court further stated, the Claimant Trust Assets at any point in time will only be available for distribution to those classes after they are monetized and all fees and expenses, including indemnification obligations, are satisfied. *See* Order Denying Reconsideration at 3. In other words, as this Court found, unless and until such contingent obligations are *known and satisfied* and all Class 8 and Class 9 Claims have been actually paid in full, Contingent Trust Interests are not “in the money” and will not “vest.”

28. The Court’s finding in its Order Denying Reconsideration, in which the Court determined that Contingent Trust Interests are not “in the money,” has thus eliminated any “live” controversy presented by the relief sought in Count Three, namely, a determination whether Plaintiffs’ Contingent Trust Interests “are likely to vest into Claimant Trust Interests.” For the foregoing reasons, Counts One and Three are moot. The Court does not have subject matter jurisdiction over Counts One and Three under Rule 12(b)(1), and such claims should be dismissed.

### **3. Count Three Improperly Seeks an Advisory Opinion**

29. The Court also does not have subject matter jurisdiction to rule on Count Three because it impermissibly seeks an advisory opinion. Under Article III of the Constitution, “no justiciable controversy is presented when ... the parties are asking for an advisory opinion.” *Paragon Asset Co. Ltd v. Gulf Copper & Mfg. Corp.*, 1:17-CV-00203, 2020 WL 1892953, at \*1 (S.D. Tex. Feb. 11, 2020) (internal quotations omitted). The “well-established constitutional ban on advisory opinions” seeks to ensure that federal courts determine “specific disputes between parties, rather than hypothetical legal questions, and in doing so, conserve judicial resources.” *Texas v. Travis County*, 272 F. Supp. 3d 973, 980 (W.D. Tex. 2017), *aff’d sub nom. Texas v. Travis*

*County, Texas*, 910 F.3d 809 (5th Cir 2018); *see also Hodgson v. H. Morgan Daniel Seafoods, Inc.*, 433 F.2d 918, 920 (5th Cir. 1970) (“We cannot render an advisory opinion on hypothetical or abstract facts.”)

30. In Count Three, Plaintiffs impermissibly ask the Court to determine whether (a) current Claimant Trust Beneficiaries “*may be* indefeasibly paid” and (b) “Contingent Claimant Trust Interests *are likely* to vest.” Compl. ¶ 94 (emphasis added). Any such determination is dependent upon several hypothetical future events concerning, among other things, asset values and recoveries (*e.g.*, whether the Fifth Circuit sustains the Dondero Parties’ appeal in the Notes Litigation, and the Claimant Trust actually recovers the bonded amounts), actual future Claimant Trust expenses, and the nature and extent of indemnification obligations.<sup>16</sup> As discussed *supra*, indemnification expenses are senior to distributions to the Claimant Trust Beneficiaries, and Claimant Trust Beneficiaries cannot be paid in full unless and until such indemnification expenses are liquidated and satisfied. Contingent Trust Interests therefore cannot vest unless and until indemnification claims are known and paid (and all Class 8 and Class 9 Claims are thereafter paid).

31. In light of the widespread litigation, additional threatened litigation, and continued accrual of related legal fees and expenses, the amount of indemnification obligations remains unknown. Thus, any determination as to whether Plaintiffs’ Contingent Trust Interests “are likely to vest” is contingent upon a number of unknown and contingent variables, including (a) the amount of indemnification obligations and (b) and whether sufficient cash remains to pay Classes 8 and 9 in full after those indemnification obligations (and other expenses) are satisfied. Such an abstract determination is precisely the type of relief precluded by the constitutional ban on advisory

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<sup>16</sup> The Highland Parties request that the Court take judicial notice of the active litigation in the Bankruptcy Case, as reflected in the *Amended Notice of Filing of Active Litigation Involve and/or Affecting the Highland Parties* [Docket No. 3880].

opinions. *See JPay LLC v. Burton*, 3:22-CV-1492-E, 2023 WL 5253041, at \*10 (N.D. Tex. Aug. 15, 2023) (dismissing case for lack of subject matter jurisdiction and declining “to render an advisory opinion on the value of the aggregated claims of a contingent, theoretical class” where such determination is contingent on a “hypothetical facts”). Accordingly, Plaintiffs have failed to show that the Court has subject matter jurisdiction to adjudicate Count Three, and it should be dismissed under Rule 12(b)(1).

**B. Count Three is Barred by Collateral Estoppel**

32. Count Three is also barred by the doctrine of collateral estoppel. Collateral estoppel is referred to as “issue preclusion” and prevents relitigating the same issues or facts decided in a prior proceeding. Collateral estoppel precludes the re-litigation of issues or facts actually litigated in the original action, whether or not the second suit is based on the same cause of action. *See Houston Professional Towing Ass'n v. City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016). “By precluding parties from contesting matters that they have had a full and fair opportunity to litigate, [collateral estoppel] protect[s] against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.” *In re Reddy Ice Holdings, Inc.*, 611 B.R. 802, 808 (Bankr. N.D. Tex. 2020) (internal quotations omitted). Collateral estoppel applies when: “(1) the issue at stake is identical to the one involved in the earlier action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in the prior action was a necessary part of the judgment in that action.” *Oyekwe v. Research Now Group, Inc.*, 542 F. Supp. 3d 496, 506 (N.D. Tex. 2021), appeal dismissed, 21-10580, 2021 WL 8776378 (5th Cir Dec. 28, 2021). These elements are easily met here.

33. The issue presented by Count Three—whether Plaintiffs’ “Contingent Claimant Trust Interests are likely to vest into Claimant Trust Interests” (Compl. ¶ 94)—is the same as the

issue at stake, and actually litigated, in connection with the Motion for Leave. In support of its Motion to Reconsider, HMIT argued that it had standing to assert its Proposed Claims because HMIT was “in the money” and its Contingent Trust Interests “will vest.” *See* Motion to Reconsider. In adjudicating the Motion to Reconsider, the Court determined that HMIT did not have standing to bring the Proposed Claims because its Contingent Trust Interests were not “in the money.” *See* Order Denying Reconsideration at 3. The issue of whether Contingent Trust Interests were “in the money” for purposes of the Motion to Reconsider, and whether Contingent Trust Interests are “likely to vest,” for purposes of this Complaint, are one and the same. This issue was, without question, litigated in connection with the Motion for Leave. The issue was raised by HMIT in its Motion to Reconsider, contested by the Highland Parties, submitted to this Court for adjudication, and expressly determined. *See Reddy*, 611 B.R. at 810 (“The requirement that an issue be ‘actually litigated’ for collateral estoppel purposes simply requires that the issue is raised, contested by the parties, submitted for determination by the court, and determined.”) (internal quotations omitted). The first and second elements of collateral estoppel are thus met.

34. The third prong of collateral estoppel—whether the Court’s prior ruling on this same issue was necessary or essential to the Order Denying Reconsideration—is likewise satisfied. The Court’s finding that Contingent Trust Interests were not “in the money” was necessary to the Court’s ultimate determination that HMIT did not have standing to assert the Proposed Claims. In other words, to determine whether HMIT could file the Motion for Leave, and later whether to grant the Motion to Reconsider, the Court was required to consider whether Contingent Trust Interests have vested. This was the only issue underlying the Motion to Reconsider, and it was necessary to the Order Denying Reconsideration. Plaintiffs are therefore collaterally estopped from re-litigating this same issue of whether their Contingent Trust Interests will vest. *See In re*

*Derosa-Grund*, 567 B.R. 773, 798 (Bankr. S.D. Tex. 2017) (debtor collaterally estopped from re-litigating issue of whether debtor owned film treatment where this same issue “was necessary” to determination on motion to reopen; was determined; and “Debtor cannot now relitigate this issue in an effort to prove that EMG owns the Treatment”).<sup>17</sup> Accordingly, Count Three is barred by collateral estoppel, and for this additional reason, this claim should be dismissed.

**C. Plaintiffs’ Claims Fail as a Matter of Law**

35. Even if the Court had subject matter jurisdiction over Counts Two and Three, the Complaint fails to state plausible claims upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) as to all Counts. To survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550

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<sup>17</sup> Although Dugaboy was not a party in the Motion for Leave, literal identity of the parties is not required as part of the collateral estoppel analysis so long as the party against whom enforcement is sought was in privity with a party involved in the initial decision. Privity exists where a non-party’s interests were adequately represented in the first suit. See *Derosa-Grund*, 567 B.R. at 798 n. 21 (Bankr S.D. Tex. 2017) (noting “federal courts will bind a nonparty whose interests were represented adequately by a party in the original suit,” and “[t]he Fifth Circuit has found that adequate representation exists between a party and a non-party ‘where a party to the original suit is so closely aligned to the non-party’s interests as to be his virtual representative.’”) (quoting *Terrell v. DeConna*, 877 F.2d 1267, 1270 (5th Cir. 1989)). Here, there can be no question that Dugaboy’s interests were sufficiently aligned as to the issue of whether Contingent Trust Interests have vested, where both Dugaboy and HMIT hold those interests and Dugaboy was funding HMIT’s litigation. See *Meador v. Oryx Energy Co.*, 87 F. Supp. 2d 658, 665 (E.D. Tex. 2000) (non-party’s interests were “sufficiently aligned” with party in previous suit for purposes of claim preclusion where, in both cases, “the plaintiffs’ claims derive solely from rights” alleging arising from the same conveyance that was interpreted conclusively in prior suit).

U.S. at 557). “When well-pleaded facts fail to meet th[e] [*Twombly*] standard, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679. Dismissal is proper under Rule 12(b)(6) when, taking the facts alleged in the complaint as true, it appears that the plaintiff “cannot prove any set of facts that would entitle it to the relief it seeks.” *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995). “[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp. 2d 919, 926 (N.D. Tex. 2014) (internal quotations omitted). Courts have “complete discretion” to either accept or exclude such evidence for purposes of the motion to dismiss. *Id.*

**1. Plaintiffs’ Equitable Accounting Claim Fails as a Matter of Law**

36. Count One, which seeks an accounting of the Claimant Trust Assets, fails to state a claim upon which relief can be granted under Rule 12(b)(6).

**i. Plaintiffs Have No Rights to Financial Information Because They are Not Claimant Trust Beneficiaries**

37. Plaintiffs have no rights to information regarding the Claimant Trust Assets.

38. *First*, as discussed above and as this Court has found, it is indisputable that Plaintiffs, holding only “Contingent Trust Interests,” are not “Beneficiaries” under the CTA.<sup>18</sup> *See* Order Denying Leave at \*35. As such, Plaintiffs have *no rights* under the CTA. *See id.* (quoting CTA, § 5.1(c)). Plaintiffs ignore this language and fail to offer any support for their broad request for financial information, other than vaguely asserting that they “are unable to determine whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests.” Compl. ¶ 83. As this Court found, while Plaintiffs may be “frustrated” that they did not negotiate the same rights

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<sup>18</sup> As discussed above, the Court may take judicial notice of the CTA. *See Johnson*, 999 F. Supp. 2d at 926 (taking judicial notice of document that is a matter of public record when considering Rule 12(b)(6) motion).

as the “actual Claimant Trust Beneficiaries,” (Valuation Order at 5), there is simply no foundation—in law, equity, or otherwise—for Plaintiffs’ request for financial information. Plaintiffs acknowledge that they are not “Claimant Trust Beneficiaries” but nevertheless imply, without any supporting facts or authority, that they should not only be treated as such, but should receive information not otherwise available to Claimant Trust Beneficiaries. In so arguing, Plaintiffs blatantly disregard the plain terms of the CTA, the Plan, and this Court’s prior orders, which expressly foreclose the relief sought in their Claims.

39. **Second**, and for largely these same reasons, equitable relief is not available where, as here, the parties’ rights and obligations at issue are set forth in the agreement. *See In re Am. Home Mortg. Holdings, Inc.*, 386 Fed. Appx. 209, 212-13 (3d Cir. 2010) (affirming bankruptcy court’s denial of equitable relief to distributions under trust documents where, among other things, the trust documents controlled distribution of monthly payments, and the Trust Certificate “cannot be rewritten on equitable grounds,” and noting “[i]n interpreting the provisions of the Trust Documents, we apply Delaware law, which instructs that a party is bound by the plain meaning of clear and unequivocal contract terms.”); *Grunstein v. Silva*, CIV.A. 3932-VCN, 2009 WL 4698541, at \*6 (Del. Ch. Dec. 8, 2009) (“Where those [fiduciary] rights arise from a contract that specifically addresses the matter at issue, the court evaluates the parties’ conduct within the framework they themselves crafted, instead of imposing more broadly defined equitable duties.”).

40. Here, the CTA expressly provides that (a) Plaintiffs are not Beneficiaries of the Claimant Trust, and, therefore, (b) Plaintiffs have no rights under the CTA. *See supra* ¶¶ 10-13. *supra*. Accordingly, the plain language of the CTA forecloses the notion that Plaintiffs have any right—equitable or otherwise—to financial information on the Claimant Trust Assets. Plaintiffs’

attempt to re-write the CTA on equitable grounds in order to grant non-beneficiaries information rights is entirely without merit.

41. **Third**, even if Plaintiffs were Claimant Trust Beneficiaries, any information rights would still be limited. Section 3819(a) of the Delaware Statutory Trust Act (the “Trust Act”) governs information rights for beneficiaries of Delaware statutory trusts and ascribes primacy to the trust’s agreement:

*Except to the extent otherwise provided in the governing instrument of a statutory trust, each beneficial owner of a statutory trust ... has the right, subject to such reasonable standards ... as may be established by the trustees or other persons who have authority to manage the business and affairs of the statutory trust, to obtain from the statutory trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the statutory trust ....*

12 Del. C. § 3819(a) (emphasis added); *see also In re Natl. Coll. Student Loan Trusts Litig.*, 251 A.3d 116, 150 (Del. Ch. 2020) (Trust Agreements “are the governing instruments of the Trusts under the DST Act.”) Here, the CTA *does* “otherwise provide.” As discussed *supra*, pursuant to the CTA and the Plan, only “Claimant Trust Beneficiaries,” by design, have information rights, which are set forth in section 3.12(b) of the CTA. *See* CTA § 3.12(b) (providing that the **only** entities with information rights under the Plan are “Claimant Trust Beneficiaries.”) And the Claimant Trust Beneficiaries’ rights (a) are limited, (b) do not include rights to asset or subsidiary level information, and (c) can be further limited by the Claimant Trustee as appropriate to “maintain confidentiality.”

42. Any duties running from the Claimant Trustee to actual Beneficiaries of the Claimant Trust relating to the disclosure of information are expressly limited by the CTA. 12 Del. C. § 3806(c) (“To the extent that ... a trustee ... has duties (including fiduciary duties) to a ... beneficial owner or to another person that is a party to or is otherwise bound by a governing instrument, the trustee’s ... duties may be ... restricted or eliminated by provisions in the governing

instrument ....”) Thus, even the actual Claimant Trust Beneficiaries would not have the broad information rights that Plaintiffs (who, again, are not even Claimant Trust Beneficiaries) seek here. This further undermines Plaintiffs’ unsupported allegations that they have any equitable rights to information on the Claimant Trust Assets.

ii. **Any Claim for an Equitable Accounting Fails Under Delaware Law**

43. To the extent Count One is treated as one for an accounting cognizable in equity, it likewise fails. Under Delaware law,<sup>19</sup> an accounting is not a cause of action sounding in equity. *Williams v. Lester*, 2023-0042-SG, 2023 WL 4883610, at \*3 (Del. Ch. Aug. 1, 2023). It is an equitable remedy by which a fiduciary may be caused to account for property subject to trust. *Id.* A claim for an accounting lies only where “(i) there are mutual accounts between parties, (ii) a fiduciary relationship exists and the defendant has a duty to account, or (iii) the accounts are all on one side but there are circumstances of great complication.” *Bus. Funding Group, Inc. v. Architectural Renovators, Inc.*, C.A. 12655, 1993 WL 104611, at \*2 (Del. Ch. Mar. 31, 1993); *see also McMahon v. New Castle Assoc.*, 532 A2d 601, 605 (Del. Ch. 1987) (“[A] request for an accounting by a *fiduciary* is a recognized basis for chancery jurisdiction,” noting “equity shall rarely, if ever, have to be resorted to in order to determine the state of accounts in a purely commercial relationship.”); 12 Del. C. § 3806(c). Where, as here, an agreement sets forth the fiduciary relationship between the parties, an extra-contractual relationship cannot be created. *See Grunstein v. Silva*, CIV.A. 3932-VCN, 2009 WL 4698541, at \*6 (Del. Ch. Dec. 8, 2009) (“Where those [fiduciary] rights arise from a contract that specifically addresses the matter at issue, the court evaluates the parties’ conduct within the framework they themselves crafted, instead of imposing more broadly defined equitable duties.”)

---

<sup>19</sup> There can be no dispute that Delaware law applies to Plaintiffs’ Claims. The Claimant Trust is a statutory trust formed under the laws of Delaware and governed by the Trust Act. Trust Act, 12 Del. C. § 3801 *et seq.*

44. The CTA governs the parties' rights and obligations. Pursuant to the CTA, Plaintiffs, as holders of Contingent Trust Interests, "**shall have no rights**" thereunder, and there is no underlying fiduciary relationship between the Claimant Trustee and Plaintiffs. Plaintiffs do not allege as such, nor could they. The Court cannot impose any duties of disclosure other than what is set forth in the CTA. Plaintiffs' equitable accounting claim fails as a matter of law. *See Bus. Funding Group*, 1993 WL 104611, at \*2 (denying claim for equitable accounting where "the parties' relationship, which is defined exclusively by the purchase and sale agreements, involves an arm's-length commercial dealing and bears none of the earmarks of a fiduciary relationship," noting the "plaintiff negotiated the protection it needed in the [] agreements," which "does not create a fiduciary relationship"); *Natl. Coll.*, 251 A.3d at 150 ("[T]he plain language of the Trust Agreement forecloses any notion that the Owner Trustee owes any extra-contractual duties (fiduciary or otherwise)" to non-owner deal parties, noting "[i]f the drafters of the Trust Agreement ... had intended the Owner Trustee to administer the Trusts in the interests of another deal party, the Trust Agreements would have said so.").<sup>20</sup>

45. Under these circumstances, Plaintiffs fail to show why equity should abrogate the terms of the CTA agreement to create extra-contractual rights relating to the disclosure of financial information or an accounting. This is especially true in light of Plaintiff HMIT's "unclean hands." HMIT is a defendant in an action on a note owed to Highland with current principal and interest owed in excess of \$98 million. *See Adv. Pro. No. 21-03076-sgj*, Docket No. 1, Count 24 (breach of contract claim arising out of HMIT note). HMIT cannot seek equitable relief relating to the

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<sup>20</sup> *See also Henry v. CitiMortgage, Inc.*, 4:11-CV-83, 2011 WL 2261166, at \*8 (E.D. Tex. May 10, 2011), *report and recommendation adopted*, 2011 WL 2214007 (E.D. Tex. June 7, 2011) (dismissing claim for equitable accounting where "Plaintiff does not explain why she is entitled to an accounting, let alone allege any facts to support her requests," noting "an accounting is an equitable remedy and not an independent cause of action."); *Johnson v. Wells Fargo Bank, NA*, 999 F. Supp 2d 919, 935 (N.D. Tex. 2014) (dismissing plaintiff's request for equitable relief because there is a contract between the parties that governs the dispute.)

disclosure of assets of the Claimant Trust when HMIT's own behavior has violated principles of equity and righteous dealing on issues relevant to the instant Action. Plaintiffs' equitable claim for financial information on the Claimant Trust is without foundation or support, blatantly disregards the CTA and other applicable documents, and fails to allege a cognizable claim. For this additional reason, Count One should be dismissed.

**2. Plaintiffs' Claims for Declaratory Relief Fail as a Matter of Law**

46. Plaintiffs' claims for declaratory relief—Counts Two and Three—also fail to state claims under Rule 12(b)(6). To sustain a claim for declaratory or injunctive relief, a plaintiff must first plead a viable underlying cause of action. *See Collin County, Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods*, 915 F.2d 167, 170-71 (5th Cir. 1990)) (the “federal declaratory judgment act is remedial only ... it is the defendant's underlying cause of action against the plaintiff that is litigated in a suit under the act”); *see also Henry*, 2011 WL 2261166, at \*8 (“The Declaratory Judgment Act is a procedural device that creates no substantive rights and requires the existence of a justiciable controversy.”); *Sivertson v. Citibank, N.A. as Tr. for Registered Holders of WAMU Asset-Back Certificates WAMU Series No. 2007-HE2 Tr.*, 390 F. Supp. 3d 769, 794 (E.D. Tex. 2019) (same). “Where all the substantive, underlying claims are subject to dismissal, a claim for declaratory relief cannot survive.” *Wallace v. U.S. Bank, N.A.*, No. 4:17-CV-437, 2018 WL 1224508, at \*2 (E.D. Tex. Mar. 9, 2018).

47. Plaintiffs' Claims for declaratory relief in Counts Two and Three fail to state plausible claims because there is no underlying controversy. They are premised on Count One, which, as discussed, is not a cognizable claim. *See* Compl. ¶¶ 90 (“*[o]nce Defendants are compelled to provide information about the Claimant Trust Assets*, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations,” and a declaration that “the conditions are such that their Contingent

Claimant Trust Interests are likely to vest into Claimant Trust Interests”) (emphasis added). Since there is no basis to “compel” the disclosure of financial information and Count One fails as a matter of law, Plaintiffs’ claims for declaratory relief, which are dependent upon such disclosure, likewise fail as a matter of law. *See Johnson*, 999 F. Supp. 2d at 935 (“Because the undersigned has determined that none of Plaintiffs claims can withstand dismissal at this time, Plaintiff’s requests for declaratory and injunctive relief as well as an accounting cannot survive.”)<sup>21</sup>

48. The value of the Claimant Trust Assets and liabilities at any given point is irrelevant to a determination whether Plaintiffs’ Contingent Trust Interests “are likely to vest.” Contingent Trust Interests cannot vest until (a) all Claimant Trust Assets are liquidated, (b) all expenses, including indemnification expenses, are known and have been satisfied, and (c) Claimant Trust Beneficiaries are thereafter paid in full. Until these and other critical variables are known, the financial information Plaintiffs seek in their Complaint is meaningless for purposes of determining “vesting.” *See supra* ¶¶ 36-27. There is no justiciable controversy underlying Plaintiffs’ claims for declaratory relief. Counts Two and Three should be dismissed. The Claims fail as a matter of law, and the Complaint should be dismissed in its entirety.

#### IV. CONCLUSION

WHEREFORE, Highland respectfully requests that the Court grant the Motion and enter an order in the form annexed to the Motion as Exhibit A, and grant such further relief as the Court deems just and proper.

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<sup>21</sup> *See also Washington v. JP Morgan Chase Bank, N.A.*, 3:18-CV-1870-K-BN, 2019 WL 587289, at \*8 (N.D. Tex. Jan. 18, 2019), *report and recommendation adopted*, 2019 WL 586048 (N.D. Tex. Feb. 12, 2019) (“Because Plaintiff has failed to state a plausible underlying claim, Plaintiff’s claims for injunctive and declaratory relief should also be dismissed.”); *Henry*, 2011 WL 2261166, at \*9 (“As Plaintiff has alleged no facts that would lead to the conclusion that a present controversy exists between her and Defendants, Plaintiff does not have a right to relief under the Declaratory Judgment Act.”)

Dated: November 22, 2023

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

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

## STIPULATION AND PROPOSED SCHEDULING ORDER

This stipulation (the “Stipulation”) is made and entered into between Highland Capital Management, L.P., the reorganized debtor in the above-referenced bankruptcy case (“Highland”), and the Highland Claimant Trust (the “Trust,” and together with Highland, the “Defendants”), on the one hand, and The Dugaboy Investment Trust (“Dugaboy”) and Hunter Mountain Investment Trust (“HMIT,” and together with Dugaboy, the “Plaintiffs,” and collectively with the Defendants, the “Parties”), on the other hand, by and through their respective undersigned counsel.

### RECITALS

WHEREAS, on May 10, 2023, Plaintiffs commenced the above-captioned adversary proceeding (the “Action”) against Highland and the Trust by filing their *Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* [Docket No. 1] (the “Complaint”).

WHEREAS, on November 22, 2023, Defendants filed their *Motion to Dismiss Complaint to (1) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* [Docket No. 13] (the “Motion to Dismiss”).

WHEREAS, the Parties previously agreed to a Stipulation and Proposed Scheduling Order [Docket No. 12] whereby the Parties agreed to a scheduling order regarding briefing on the Motion to Dismiss.

WHEREAS, the Parties have agreed to extend the deadlines related to the Motion to Dismiss by one week and amend the Stipulation and Proposed Scheduling Order as specifically set forth below.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval of this Stipulation by the Court, it shall be SO ORDERED:

1. The Parties agree to the following Proposed Joint Scheduling Order:

<b>Event</b>	<b>Deadline</b>
Plaintiffs file their Response to Motion to Dismiss	December 29, 2023
Defendants file their Reply in Support of Motion to Dismiss	January 19, 2024
Hearing on Motion to Dismiss (via WebEx)	On or after January 29, 2024

2. If approved by the Court, the Proposed Joint Scheduling Order shall only be modified in a writing signed by the Parties or upon the entry of an order of the Court entered upon notice to the Parties.

3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Stipulation.

Respectfully submitted,

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

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

**ORDER GRANTING STIPULATION AND PROPOSED SCHEDULING ORDER**

Having considered the Stipulation and Proposed Scheduling Order [Docket No. \_\_\_\_] (the “Stipulation”), a copy of which is attached as **Exhibit A**, filed by Highland Capital Management,

L.P., the reorganized debtor in the above-referenced bankruptcy case (“Highland”), and the Highland Claimant Trust (the “Trust,” and together with Highland, the “Defendants”) on the one hand, and The Dugaboy Investment Trust (“Dugaboy”) and Hunter Mountain Investment Trust (“HMIT,” and together with Dugaboy, the “Plaintiffs,” and collectively with the Defendants, the “Parties”) on the other hand,

**IT IS HEREBY ORDERED THAT:**

1. The Stipulation is **APPROVED**.
2. The Stipulation shall become effective immediately upon entry of this Order.
3. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Stipulation and this Order.

**## END OF ORDER ##**

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

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

**THE DUGABOY INVESTMENT TRUST AND HUNTER MOUNTAIN  
INVESTMENT TRUST’S RESPONSE TO THE HIGHLAND PARTIES’ MOTION  
TO DISMISS COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE ASSETS  
OF THE HIGHLAND CLAIMANT TRUST and (II) DETERMINE (A) RELATIVE  
VALUE OF THOSE ASSETS, and (B) NATURE OF PLAINTIFFS’ INTEREST  
IN THE CLAIMANT TRUST**

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## I. PRELIMINARY STATEMENT

1. Plaintiffs filed this adversary proceeding against Defendants Highland Capital Management, L.P. (“HCMLP”) and the Highland Claimant Trust (the “Claimant Trust”) (collectively, “Defendants”) to obtain critical information about the assets and liabilities of the Claimant Trust, which was established under the Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (the “Plan”) [Bankr. Dkt. 1943-1] for the benefit of Claimant Trust Beneficiaries to monetize and liquidate the assets of the HCMLP bankruptcy estate.<sup>1</sup> Plaintiffs have sought this information since June 2022, while HCMLP spent the last 18 months exhausting significant resources to keep the financial status of the estate out of the public eye. Ironically, in the interim, the litigation trustee voluntarily stayed his avoidance action, effectively acknowledging what Plaintiffs have been arguing – that there is more than enough money in the estate to pay all creditors with interest. This is consistent with the disclosure of the Pro-Forma Adjusted Balance Sheet (“Balance Sheet”)<sup>2</sup> in July 2023 evidencing that Plaintiffs are *in the money*<sup>3</sup> after all creditors have been paid with interest.

2. At the same time, HCMLP and the Claimant Trust have blocked Plaintiffs (and have indicated an intent to continue to block them) from seeking relief to which they would otherwise be entitled, by contending without evidence that Plaintiffs have no standing because they are purportedly not “in the money” – *i.e.*, able or even likely to recover anything from the Claimant Trust.

3. Given Plaintiffs’ established interest and Defendants’ “heads-I-win, tails-you-lose” arguments, further disclosure of the estate’s financial status is warranted and required. As a result,

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<sup>1</sup> Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust (“Complaint”), Dkt. No. 1, at ¶¶ 1, 64.

<sup>2</sup> Bankr. Dkt. 3872 at p.5.

<sup>3</sup> “In the money” is a colloquial term that has been used in this case to mean that the net assets of the Claimant Trust are sufficient to make it certain and/or likely that the Class 10 and/or 11 Claimholders will be entitled to payment from the estate.

Plaintiffs bring three claims in this adversary proceeding: Count One requests an accounting; Count Two requests a declaratory judgment regarding the value of the Claimant Trust assets; and Count Three requests a declaratory judgment and determination regarding the nature of Plaintiffs' interests in the Claimant Trust. These claims are necessary to rebut HCMLP and the Claimant Trust's continued disputation of the financial status of the estate.

4. Although the Balance Sheet disclosed the positive net value of the estate, HCMLP and the Claimant Trust continue to deny the estate's solvency and to block Plaintiffs' efforts to gain further insight into the financial condition of the estate — what assets are being sold and what expenses can be avoided. Plaintiffs are entitled to the information that will enable them to advocate to maximize recovery for former equity who are *in the money*.

5. Defendants' motion to dismiss should be seen in this light, and also viewed with skepticism due to the conflicts of interest, discussed below, that taint the decision-making of the Debtor and Claimant Trustee - who have a vested interest in obscuring the finances of Claimant Trust in order to justify keeping the estate open and maintaining lucrative positions for its administrators.<sup>4</sup>

6. Defendants engage in doublespeak when they argue that the disclosure of the Balance Sheet moots the Plaintiffs' claims, while also arguing that Plaintiffs cannot rely on the Balance Sheet because it reflects nothing more than alleged "estimates" and that market forces will cause variances. They cannot have it both ways.

7. Defendants also claim, albeit mistakenly, that Plaintiffs are collaterally estopped because the Bankruptcy Court already ruled in a separate proceeding that the Balance Sheet did not establish that Plaintiffs were *in the money*.<sup>5</sup> Plaintiffs disagree with Defendants' interpretation of the Balance Sheet, the appealed conclusions and impact of the Court's order, and whether collateral

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<sup>4</sup> See paragraph 14 to 16 *infra*.

<sup>5</sup> Dkt. 14 at ¶¶ 32-34; Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024, Bankr. Dkt. 3936.

estoppel applies. The Court’s order was not essential to the Court’s determination on standing in those other proceedings. Furthermore, The Dugaboy Investment Trust (“Dugaboy”) was not a party to those proceedings and, therefore, is not subject to collateral estoppel.

8. Plaintiffs’ claims present ripe, justiciable controversies, and this Court has subject matter jurisdiction over Plaintiffs’ claims. If Defendants’ interpretation is wrong, then Plaintiffs have a right to protect their *in the money* status and to determine how the assets are currently being monetized and maximized for their benefit. If Defendants are correct in their interpretation of the data in the Balance Sheet, which they are not and for the sake of argument only, then Plaintiffs are still entitled to further investigate the current financial condition of the estate in light of continued litigation and monetization of assets. Either way, Plaintiff should be allowed to proceed with this action.

9. Thus, Defendants’ Motion to Dismiss should be denied for several reasons. First, neither the Balance Sheet nor the Court's order denying reconsideration moot Counts One or Three. Second, Count Three does not seek an advisory opinion. Third, Count Three is not barred by collateral estoppel. Fourth, Count One sufficiently states a claim for an accounting. Lastly, Counts Two and Three sufficiently state a claim for declaratory judgment.

## II. BACKGROUND

10. Dugaboy and Hunter Mountain Investment Trust (“HMIT”) (collectively, “Plaintiffs”) are documented holders of denominated Contingent Claimant Trust Interests that become Claimant Trust Beneficiaries after all creditors are paid in full.<sup>6</sup> The Claimant Trust Agreement (“CTA”)

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<sup>6</sup> Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust (“Complaint”), Dkt. No. 1, at ¶ 1, 58, 65.

evidences an intent that Plaintiffs become Claimant Trust Beneficiaries when Claimant Trust assets are sufficient to pay all lower ranked claims in full with interest.<sup>7</sup>

11. Defendants filed post-confirmation reports (dated October 21, 2022, January 24, 2023, and April 21, 2023) (“Post-Confirmation Quarterly Reports”) demonstrating that there is more than enough money in the estate to satisfy legitimate indemnity obligations and to otherwise pay Class 8 and 9 creditors in full.<sup>8</sup> With more than \$100 million in assets remaining to monetize (not even counting related party notes), and almost \$550 million in assets already monetized, there is enough money to pay the \$387 million in allowed creditor claims.<sup>9</sup> The Post-Confirmation Quarterly Reports for the first quarter of 2023 also show distributions of \$270,205,592 to holders of unsecured claims, which is 68% of the total value of allowed general unsecured claims of \$397,485,568.<sup>10</sup> This amount is far greater than what was represented at the time of confirmation of the Plan.<sup>11</sup>

12. Plaintiffs have previously sought additional financial information without success.<sup>12</sup> Specifically, Plaintiffs have asked for more granular information to allow an even more detailed evaluation to specifically identify all of the money raised and how it has been used and distributed, ***including at least a hundred million dollars not clearly accounted for***, based on the Defendants’ financial filings.<sup>13</sup> But Defendants steadfastly refuse to provide this information.<sup>14</sup> Instead,

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<sup>7</sup> *Id.* at ¶¶ 65-66.

<sup>8</sup> *Id.* at ¶ 2. Under the Plan, General Unsecured Claims were classified as Class 8 and Subordinated Claims were classified as Class 9. *Id.* at ¶ 57. The Plan also classified HMIT’s Class B Limited Partnership Interest and Class C Limited Partnership Interest as Class 10 and Dugaboy’s Limited Partnership Interest as Class 11. *Id.* at ¶ 58.

<sup>9</sup> *Id.* at ¶ 2.

<sup>10</sup> *Id.* at ¶ 67.

<sup>11</sup> *Id.* at ¶ 67.

<sup>12</sup> *Id.* at ¶ 17.

<sup>13</sup> *Id.* at ¶ 2.

<sup>14</sup> *Id.* at ¶ 17.

Defendants argue that Plaintiffs are wrong – that Plaintiffs are *not in the money* – but Defendants do so without providing any documentation to support their position.

13. Unquestionably, the value of the estate, as held in the Claimant Trust, has significantly changed since Plan confirmation.<sup>15</sup> Many of the estate’s major assets have been liquidated or sold since then, increasing the value of the estate, and many of the assets held by the estate have significantly increased in value, also increasing the value of the estate.<sup>16</sup> But these current proceedings will enable Plaintiffs to further evaluate the current value of the estate, evaluate and protect the distributions to which Plaintiffs are entitled, and evaluate whether those who should be safeguarding the estate’s value are doing so rather than enabling continual waste. Meanwhile, the selective financial information that has been provided suggests that inappropriate self-dealing has occurred - which on its own justifies a full accounting.<sup>17</sup>

14. Likewise, Defendants have failed to provide an ongoing portrait of the estate’s finances. These current proceedings are therefore warranted so Plaintiffs and the bankruptcy court can know exactly what information is being utilized to stymie Plaintiffs’ efforts to challenge Defendants’ administration of the estate and Claimant Trust and Defendants’ attempts to justify unnecessary litigation by the estate against its own beneficiaries. The refusal to provide access to additional financial information is especially troublesome given the blatant conflict of interest that exists. James Seery is both the Claimant Trustee and the Trust Administrator of the Indemnity Subtrust (to whom the trustee of the Indemnity Subtrust answers).<sup>18</sup> This creates an irresolvable conflict whereby Seery purports to have exclusive control over the Indemnity Subtrust—to the

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<sup>15</sup> *Id.* at ¶ 68.

<sup>16</sup> *Id.* at ¶ 68.

<sup>17</sup> *Id.* at ¶ 4.

<sup>18</sup> See *Debtor’s Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust And (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief* [Bankr. Dkt. 2491] (the “Subtrust Motion”) at ¶ 21, pp. 8-9; Order approving the Subtrust Motion [Bankr. Dkt. 2599].

detriment of all Claimants and holders of Equity Interests. As the Trust Administrator of the Indemnity Subtrust, Seery directs administration of all aspects of the Indemnity Subtrust in his sole discretion.<sup>19</sup> The sole beneficiaries of the Indemnity Subtrust are the Indemnified Parties as defined in Section 8.2 of the CTA and subject to its terms, including Seery himself.

15. Seery has the following duties under the Claimant Trust: a) pay the remaining Class 8 and 9 claims in full, b) file the GUC Certification, and c) vest the Class 10 and 11 Equity Interests.<sup>20</sup> In addition, he has the legal duty to do so timely and “not unduly prolong the duration of the Claimant Trust.”<sup>21</sup> But because he is an Indemnified Party, subject to the terms of the CTA, Seery chooses to use the remaining assets of the Claimant Trust to both fund a cash reserve to the Indemnity Subtrust, reportedly now totaling \$50 million and, on top of that, create an additional “indemnity reserve” of some \$90 million<sup>22</sup> in the Claimant Trust. Simply put, Seery has chosen (unilaterally and self-servingly) to dedicate the assets of the Claimant Trust to erect an “indemnity wall” in front of himself instead of using available funds consistent with his duties as the Claimant Trustee. These facts justify closer scrutiny of the Claimant Trust’s finances.

16. By concealing the details of the Claimant Trust, Seery, as Claimant Trustee, can continue to frustrate the Plan by refusing to pay Class 8 and 9 claims holders, refusing to file the GUC Certification confirming that Plaintiffs are *in the money*, and thereby render the treatment of all remaining constituents under the Plan, both claimants and former equity, illusory. All claimants, including the Plaintiffs, have a right and, given Defendants’ positions, a need to understand how the Claimant Trust is currently handling their money and interests.

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<sup>19</sup> See Subtrust Motion, Bankr. Dkt. 2491, at ¶ 21, pp. 8-9; CTA ¶ 6.1(a) which states that Claimant Trustee’s determinations concerning reserves for indemnification are “**not subject to the consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive the termination of the Claimant Trustee**” (emphasis added).

<sup>20</sup> See CTA at ¶¶ 1.1(h), 1.1(aa), and 5.1.

<sup>21</sup> See CTA at ¶¶ 2.2(b), 3.2(a), and 3.3(a).

<sup>22</sup> Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust, Bankr. Dkt. 3872 at Ex. A.

### III. ARGUMENT

#### A. The Balance Sheet Does Not Moot Count One.

17. Defendants argue in their Motion that “Count one is moot in light of the Balance Sheet and must be dismissed for lack of subject matter jurisdiction under Rule 12(B)(1).” Motion at ¶ 24. Specifically, Defendants argue that the Balance Sheet, which was filed on July 6, 2023, and discloses financial information as of May 31, 2023, “shows the value of the Claimant Trust Assets, the Claimant Trust liabilities, and the potential equity value available for Claimant Trust Beneficiaries (assuming all Claimant Trust Assets are liquidated at current valuations and liabilities are fixed),” and has “thus eliminated the ‘actual controversy’ between the parties. Motion at ¶¶ 25-26. But they are wrong. The dispute remains ongoing, not the least of which because of *Defendants* contentions and arguments that the Balance Sheet is not conclusive.

18. Defendants themselves argued on April 24, 2023, a month before the as-of date on the Balance Sheet, that “Mr. Dondero and Hunter Mountain and Dugaboy keep telling the Court assets exceed liabilities. Assets exceed liabilities. And you know our position on that, Your Honor. They may; they may not.”<sup>23</sup> Defendants’ telling observation contradicts their mootness argument and—importantly—reinforces Plaintiffs’ claims for further disclosures. If the Balance Sheet provides all necessary information and is accurate, then it should be easy for Defendants to admit that holders of Contingent Claimant Trust Interests have vested into Claimant Trust Interests. If Defendants want to contest the logical conclusion drawn from the Balance Sheet—the only currently-available disclosure of its kind—then Defendants should be compelled to produce the financial information necessary to

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<sup>23</sup> Apr. 24, 2023 Hrg. Trans., Bankr. Dkt. 3765, at 29:4 – 7.

support their position.<sup>24</sup> But Defendants refuse to do so. They instead ask this Court to rely on their ambiguous *ipsi dixits* without supporting proof.<sup>25</sup>

19. Additionally, despite disclosing only the Balance Sheet, Defendants have argued that Plaintiffs should not rely on it. Taken as true, the Balance Sheet confirms Plaintiffs' *in the money* status. Nonetheless, Plaintiffs are entitled to more detailed information, particularly in light of Defendants' arguments disclaiming their own Balance Sheet.

20. For example, the information contained in the Balance Sheet provides information as of May 31, 2023, but estate administration is ongoing.<sup>26</sup> Defendants argue as much: the Balance Sheet specifically states that the information contained in it "is based on matters as they exist as of the date of preparation and not as of any future date."<sup>27</sup>

21. Additionally, although the Balance Sheet assigns values to the Claimant Trust's assets and liabilities, it is unaudited and provides no detail regarding what is included in those values or how they were determined.<sup>28</sup> Thus, because there is no description of which assets have been sold or what value was realized as a result of those sales, there is no way to determine the current extent to which asset sales were materially mismanaged, causing Plaintiffs to be damaged. Further, there is no

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<sup>24</sup> *In re Comu*, No. 09-38820-SGJ-7, 2014 WL 3339593, at \*51 (Bankr. N.D. Tex. July 8, 2014), *aff'd*, *appeal dismissed sub nom. Comu v. King Louie Min., LLC*, 534 B.R. 689 (N.D. Tex. 2015), *aff'd sub nom. Matter of Comu*, 653 Fed. Appx. 815 (5th Cir. 2016) and *aff'd sub nom. Matter of Comu*, 653 Fed. Appx. 815 (5th Cir. 2016) (where this Court opined "Moreover, where [Debtor] remained silent about assets and material financial information, and 'chose to disclose material financial information *only* when directly asked or confronted with the truth,' his 'behavior justifies a presumption of fraud, as this is the essence of intent to deceive.' As the bankruptcy court in *In re Henley* pointed out, holding otherwise would send 'a dangerous message: that as long as a debtor eventually discloses his earlier omission, any earlier fraudulent intent is negated. In effect, this would mean that there are no consequences for a debtor's failure to make proper and timely disclosures.'" (citing *In re Henley*, 480 B.R. 708, 796 (Bankr. S.D. Tex. 2012)).

<sup>25</sup> For example, on May 1, 2023, "[t]he debtor's counsel asserted in oral argument that, based on all the [unspecified] record evidence, the debtor's assets would be completely depleted, likely in Class 8 — several classes higher than Dugaboy's priority class ..." *Matter of Highland Capital Management, L.P.*, No. 22-10960, 2023 WL 4861770, at \*3 (5th Cir. July 31, 2023).

<sup>26</sup> Bankr. Dkt. 3872 at Exhibit A, p.5.

<sup>27</sup> *Id.* at p.6.

<sup>28</sup> *Id.* ("This presentation is not in accordance with US GAAP and is unaudited . . .").

information that would allow the parties or the Court to determine the reasonableness of all of the administrative costs that have been incurred to date and will be incurred in the future.<sup>29</sup> While the Balance Sheet certainly demonstrates that Plaintiffs are *in the money*, additional information is needed to make sure that the benefits which will flow to Plaintiffs are maximized and not wasted.

22. With respect to assets, there is no detail regarding the “Investments,” only a vague estimation that \$118 million of Investments exist. The Debtor filed an addendum to its March 31, 2023 Operating Report (Bankr. Dkt. 3757 at Addendum Item 5) (“Addendum”)<sup>30</sup> disclosing certain remaining assets, but even that is opaque. For example, the Addendum discloses “[p]ost-sale escrows” from “two private equity companies.”<sup>31</sup> But there is no disclosure of which companies it refers to, the amounts of the escrows, the conditions precedent to the release of the escrows, or the anticipated timing.<sup>32</sup> Additionally, the Debtor holds “direct or indirect interest in two private funds.”<sup>33</sup> But Debtor has not disclosed which funds. What are their respective liquidity rules? Have they been going up or down in value? The Debtor also lists “other misc.,” which includes “future revenue streams and receivables” without detail.<sup>34</sup> With respect to cash, while the Plaintiffs can estimate the estate’s cash balance, where that cash is sitting and what structural or accounting restrictions are in place on its use remain unclear. Finally, Plaintiffs do not have a current perspective on future cash flows, their amounts, and their probability of continuing.

23. With respect to liabilities, the Balance Sheet shows \$15 million in “[o]ther liabilities” and a purported adjustment of \$13 million *additional* “[o]ther liabilities.”<sup>35</sup> What is the basis for these

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<sup>29</sup> Bankr. Dkt. 3872 at Exhibit A, p.5.

<sup>30</sup> Bankr. Dkt. 3757 at p. 15

<sup>31</sup> *Id.*

<sup>32</sup> *See, generally*, Addendum.

<sup>33</sup> Bankr. Dkt. 3757 at p. 15

<sup>34</sup> *Id.*

<sup>35</sup> Bankr. Dkt. 3872 at Exhibit A, p. 5.

liabilities? Are they owed to estate-affiliated parties that may be subject to negotiation or third-party service providers such as the office lease for which there really is no basis for negotiation? What is the payment deadline on these liabilities and is there interest running? What are the off-balance sheet “springing contingent liabilities” in Note 5 to the Balance Sheet?<sup>36</sup>

24. Further, the Balance Sheet purports to make four “adjustments” totaling \$198 million in reduction in the value of the estate. While the notes explain the two asset-related “adjustments,” there is no explanation of the basis for and amount of the \$90 million “[a]dditional indemnification reserves” and the aforementioned \$13 million in “[o]ther liabilities.”

25. Financial statements of a company typically are comprised of a balance sheet, income statement, and a cash flow statement (also, if applicable, a Statement of Changes to Shareholder Equity). These collectively give a more detailed perspective of the company’s finances, including but not limited to regarding what expenses have been incurred to date and likely will need to be incurred into the future and what revenues likely will be generated. Even with a company in liquidation, it is important to understand what, if any, expenses would need to continue and what, if any, additional cash will be generated. This information is vital to any party seeking to wrap up the estate. Further disclosures are required to facilitate the important decisions necessary to resolve this estate that has been “liquidating” post-Effective Date for over two and a half years—with no end in sight.

26. Notably, Defendants have previously raised the above-stated issues to avoid reliance on the Balance Sheet—the very same document they now incredibly claim “moots” Plaintiffs’ Count One. Specifically, Defendants seek to disclaim any reliance on the Balance Sheet by stating that it is merely an estimate and *should not be relied upon by anyone*: “The information contained in this summarized consolidated balance sheet (the “Summary”) is based on estimates, and therefore should

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<sup>36</sup> *Id.* at p. 6

not be relied upon, as actual results may differ materially from the estimates contained herein.”<sup>37</sup> But this is true gamesmanship. Defendants cannot provide estimates to claim that Defendants have received everything they need and then disclaim the reliability of that very same information. This classic doublespeak is precisely the type of “litigation posturing” that the Fifth Circuit warned about in *Fontenot v. McCraw*, 777 F.3d 741, 747-48 (5th Cir. 2015), when it stated that courts must give closer attention when a defendant claims to have mooted a case through the defendant’s “voluntary conduct,” as opposed to “official acts of third parties.”

27. Plainly, Defendants’ production of the Balance Sheet does not resolve Plaintiffs’ claims. The financial status of the Claimant Trust and whether/when Plaintiffs are entitled to distributions is an ongoing controversy as a result of the ongoing sale of assets and distributions. When there is an ongoing controversy, a case is not moot. *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 377 n.40 (5th Cir. 2022) (“if there is an ongoing dispute giving a plaintiff standing, the case is not moot.”); *Laza v. City of Palestine*, No. 6:17-CV-00533-JDK, 2021 WL 2856685, at \*7 (E.D. Tex. July 8, 2021) (case is not moot because “[t]his controversy is ongoing and live . . . and Plaintiff has a concrete interest in the matter.”); *In re RE Palm Springs II, LLC*, No. 3:20-CV-3486-B, 2021 WL 3213013, at \*3 (N.D. Tex. July 29, 2021) (“Thus, under § 363(m), the sale of the Property does not moot SRC’s appeal because there is an ongoing issue, which was properly preserved, as to whether HPS acted in good faith.”); *Friends of Lydia Ann Channel v. U.S. Army Corps of Engineers*, No. 2:15-CV-514, 2016 WL 6876652, at \*6 (S.D. Tex. Nov. 22, 2016) (case is not moot because “[t]here are ongoing controversies”). In sum, Count One should not be dismissed because Defendants’ provision of information at one point in time, months ago, (the reliability of which Defendants have expressly disavowed) does not moot this ongoing controversy.

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<sup>37</sup> Bankr. Dkt. 8372 at Exhibit A at p.6 (emphasis added).

**B. The Court’s Order Denying Reconsideration Does Not Moot Count Three.**

28. Defendants argue that Count Three, which seeks a declaration regarding that Plaintiffs’ Contingent Trust Interests are at least “likely to vest into Claimant Trust Interests, making them Trust Beneficiaries,” is moot because the Court purportedly already decided this issue. Motion at ¶ 27. Specifically, Defendants argue that Plaintiff HMIT’s Motion to Reconsider filed with respect to the Order Denying Leave, “incorrectly argued that the Pro Forma Adjusted Balance Sheet showed that HMIT’s Contingent Trust Interests were ‘in the money,’ and likely to vest, and that the Court subsequently found that Contingent Trust Interests are not ‘in the money.’” Motion at ¶ 27. Defendants claim that this eliminated any live controversy presented by Count Three. Motion at ¶ 28. Defendants are incorrect.

29. A case becomes moot when “an intervening event renders the court unable to grant the litigant any effective relief whatever.” *Franciscan All., Inc. v. Becerra*, 553 F. Supp. 3d 361, 368 (N.D. Tex. 2021); *see also DeOtte v. State*, 20 F.4th 1055, 1064 (5th Cir. 2021) (stating a case is moot when “any set of circumstances . . . eliminates [the] actual controversy after the commencement of a lawsuit”). However, “[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” *Franciscan All.*, 553 F. Supp. 3d at 368.

30. As the cases cited above demonstrate, an ongoing controversy, such as the one that exists here, cannot be mooted. This Court’s *dicta* that HMIT was not “*in the money*” at the time it issued its order is based on information that Defendants refuse to stand behind. It does not mean that HMIT is not “*in the money*” now nor does it mean that HMIT will never be “*in the money*.” And, finally, the order on which Defendants seek to rely is currently on appeal and may be overturned.<sup>38</sup>

31. In sum, Plaintiffs have a concrete interest in a determination that its Contingent Trust Interests are effectively vested and this Court’s previous order does not eliminate that interest. Thus,

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<sup>38</sup> Hunter Mountain Investment Trust’s Second Notice of Appeal, Bankr. Dkt. 3945.

Count Three is not moot and cannot be dismissed. Defendants’ Motion should be denied because it is based on flawed legal arguments and misapprehends the nature of Plaintiffs’ claims.

**C. Count Three Does Not Seek an Advisory Opinion.**

32. Defendants next argue that Count Three should be dismissed because it purportedly seeks an impermissible “advisory opinion,” and, therefore, the Court does not have subject matter jurisdiction to rule on the claim.<sup>39</sup> Specifically, Defendants argue that Plaintiffs’ requests for relief about whether they are or will be entitled to be paid are dependent on a number of unknown and contingent variables, rendering the request an “abstract determination” that is impermissible. Motion at ¶¶ 30-31.

33. “Although [d]eclaratory judgments cannot be used to seek an opinion advising what the law would be on a hypothetical set of facts . . . , declaratory judgment plaintiffs need not actually expose themselves to liability before bringing suit.” *Frye v. Anadarko Petroleum Corp.*, 953 F.3d 285, 294 (5th Cir. 2019) (internal quotations omitted). “Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.* (quotation omitted).

34. Here, Count Three is not dependent upon hypothetical facts. Count Three is only dependent upon a resolution of whether the “Claimant Trust assets exceed the obligations of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid[.]”<sup>40</sup> Contrary to Defendants’ argument, this does not require the Court to consider hypothetical future events like the outcome of the appeal in the Notes Litigation,<sup>41</sup> future Claimant Trust expenses, or the

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<sup>39</sup> Motion at ¶ 29.

<sup>40</sup> Complaint at ¶ 94.

<sup>41</sup> *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P.*, et al, Case No. 21-cv-00881 (N.D. Tex.) at Dkt. 158 [App. 18-21].

nature and extent of indemnification obligations. Motion at ¶ 30. Instead, Count Three seeks a declaration that, at the time that this proceeding is decided, the Claimant Trust assets exceed the obligations of the bankruptcy estate such that Plaintiffs' Contingent Trust Interests are effectively vested. There is nothing "abstract" about this request. This is not an advisory opinion and the Court should reject Defendants' request to dismiss Count Three.

**D. Count Three Is Not Barred by Collateral Estoppel.**

35. Defendants next argue that Count Three should be dismissed because it is barred by the doctrine of collateral estoppel. Specifically, Defendants argue that the issue presented by Count Three, whether Plaintiffs' Contingent Interests are likely to vest, is purportedly the same issue already litigated in connection with HMIT's Motion to Reconsider. Motion at ¶ 33.

36. Collateral estoppel only applies if "(1) the issue at stake [is] *identical* to the one involved in the prior action; (2) the issue [was] actually litigated in the prior action; and (3) the determination of the issue in the prior action [was] *a necessary part of the judgment* in that earlier action." *Hacienda Records, L.P. v. Ramos*, 718 Fed. App'x 223, 228 (5th Cir. 2018) (emphases added). The Fifth Circuit has held that a previous decision is not "necessary" to the final judgment when it is "incidental, collateral, or immaterial to that judgment." *Hicks v. Quaker Oats Co.*, 662 F.2d 1158, 1168 (5th Cir. 1981) ("it has always been the rule that although an issue was fully litigated and a finding made on the issue in prior litigation, the prior judgment will not act as collateral estoppel as to the issue if the issue was not necessary to the rendering of the prior judgment, and hence was incidental, collateral, or immaterial to that judgment."). *See also OJSC Ukrnafta v. Carpatsky Petroleum Corp.*, No. CV H-09-891, 2018 WL 5921228, at \*6-8 (S.D. Tex. Nov. 13, 2018) (same). But the issue raised in Count Three is neither identical to the issues litigated in connection with HMIT's Motion to Reconsider nor was it a necessary part of the Court's resulting order.

37. This Court’s prior decision does not address the current issue in dispute and certainly does not mean that HMIT (or somehow Dugaboy, who was not a party in those proceedings) is not “*in the money*” now, nor does it mean that HMIT (or Dugaboy) will never be “*in the money.*” Accordingly, the issue at stake (as well as the parties) are not identical and collateral estoppel does not apply.

38. This Court’s previous finding was not a necessary part of this Court’s decision on HMIT’s Motion for Leave or HMIT’s Motion to Reconsider. The Court initially denied HMIT’s Motion for Leave without any consideration of whether HMIT was “*in the money.*” Therefore, the issue of whether HMIT was “*in the money*” cannot have been a “necessary” part of the Court’s order. It also cannot be said to have been fully and fairly litigated, another prerequisite for collateral estoppel,<sup>42</sup> because it was only able to be raised in a post judgment motion without discovery or a hearing.<sup>43</sup>

39. Furthermore, the Court conceded that its dicta on whether HMIT was “*in the money*” was not necessary to its decision denying the Motion to Reconsider. Specifically, the Court found that there were no reasonable grounds to reopen the record based on the post-hearing financial disclosures because it believed that they were not materially different than the Post-Confirmation Reports filed by Debtor on April 21, 2023.<sup>44</sup> The Court went on to state that: “[s]o, to the extent HMIT is arguing that the ‘post-hearing financial disclosure filings’ are something akin to newly discovered evidence or otherwise a ground for a new hearing or altering findings, HMIT’s argument lacks merit. Moreover, even if this court were to consider the ‘post-hearing financial disclosure filings,’ the court disagrees

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<sup>42</sup> *In re USAA Gen. Indem. Co.*, 629 S.W.3d 878, 883 (Tex. 2021); *Diminico v. Lehman Bros.*, 84 F.3d 433, at \*1 (5th Cir. 1996) (not designated for publication).

<sup>43</sup> *USAA*, 629 S.W.3d at 884.

<sup>44</sup> Order Denying Motion of HMIT Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (Bankr. Dkt. 3936) at pp. 2-3.

with HMIT's central argument that they demonstrate HMIT's contingent interest is 'in the money....'"<sup>45</sup> In other words, per the Court's words, the finding on which Defendants seek to rely was unnecessary dicta and not a basis for the application of collateral estoppel. *Hicks*, 662 F.2d at 1168. Accordingly, collateral estoppel does not apply and Count Three should not be dismissed.

**E. Count One Sufficiently States a Claim for Disclosures of Claimant Trust Assets and Request for Accounting.**

**1. Plaintiffs have a legal right to obtain the information that they seek in this proceeding.**

40. Defendants argue that Plaintiffs have no right to any financial information as a matter of law because they allegedly hold only Contingent Trust Interests and are not beneficiaries under the CTA. Motion at ¶¶ 38-41. According to Defendants, the language of the CTA makes clear that only current beneficiaries have rights to information under the CTA. Defendants are incorrect. Plaintiffs are intended (albeit contingent) beneficiaries of the Claimant Trust.

41. The Delaware Code does not define the term "beneficiary," but Delaware courts follow the RESTATEMENT (THIRD) OF TRUSTS,<sup>46</sup> which defines beneficiaries to include contingent beneficiaries:

*Persons who are beneficiaries: in general.* The "beneficiaries" of a trust are the persons or classes of persons, or the successors in interest of persons or class members, upon whom the settlor manifested an intention to confer beneficial interests (vested **or contingent**) under the trust, plus persons who hold powers of appointment (special or general) or have reversionary interests by operation of law. Also included are persons who have succeeded to interests of beneficiaries by assignment, inheritance, or otherwise.<sup>47</sup>

42. Delaware courts routinely hold that, when interpreting undefined statutory terms, courts must give those terms a "reasonable and sensible meaning in light of their intent and purpose." *Angstadt v. Red Clay Consol. Sch. Dist.*, 4 A.3d 382, 390 (Del. 2010). In ascertaining the "reasonable

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<sup>45</sup> *Id.* at p. 3.

<sup>46</sup> See, e.g., *In re Tr. Under Will of Flint for the Benefit of Shadek*, 118 A.3d 182, 195 (Del. Ch. 2015); *Tigani v. Tigani*, No. CV 2017-0786-KSJM, 2021 WL 1197576, at \*14 (Del. Ch. Mar. 30, 2021), *aff'd*, 271 A.3d 741 (Del. 2022).

<sup>47</sup> RESTATEMENT (THIRD) OF TRUSTS, § 48 cmt. a (2003) (emphasis added).

and sensible meaning” of terms, Delaware courts rely on dictionaries as a source of interpretation. *See id.*

43. Black’s Law Dictionary defines “beneficiary” as, among other things, “[s]omeone who is designated to receive the advantages from an action or change . . . or to receive something as a result of a legal arrangement or instrument” and includes both “contingent beneficiar[ies]” and “direct beneficiar[ies]” within the definition without any qualification regarding their rights.<sup>48</sup> By contrast, Black’s distinguishes an “incidental beneficiary” as a “third-party beneficiary, who, though benefiting indirectly, is not intended to benefit from a contract and thus does not acquire rights under the contract.”<sup>49</sup> Nothing in the CTA indicates that Plaintiffs are merely “incidental beneficiaries.”

44. In light of the RESTATEMENT and the definition in Black’s Law Dictionary, it is reasonable and sensible to interpret the word “beneficiary” as used in Section 3327 of the Delaware statute to include contingent beneficiaries. Rules of statutory interpretation support this conclusion.

45. As the Delaware Supreme Court explained, a court “may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature.” *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) (citing *Wilmington Trust Co. v. Barry*, 338 A.2d 575, 578 (Del Super. Ct. 1975), *aff’d*, 359 A.2d 664 (Del. 1976)). If the Delaware Legislature had intended that only “vested” beneficiaries could bring an action to remove a trustee, as opposed to any beneficiary (whether residual or contingent), it would have so specified. In this case, the relevant statute—Del. Code Ann. tit. 12, § 3327—uses the term “beneficiary” without defining or limiting it. Accordingly, a court may not do what the Delaware Legislature refused to do by engrafting the term “vested” into the statute to qualify the term “beneficiary.”

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<sup>48</sup> *Black’s Law Dictionary* (11th ed. 2019).

<sup>49</sup> *Id.*

46. Delaware courts refuse to read statutory language restrictively to exclude certain classes of beneficiaries. *See Estate of Tigani*, No. CV 7339-ML, 2016 WL 593169, at \*14 (Del. Ch. Feb. 12, 2016) (holding that the “statute’s use of the general term beneficiary, without any language restricting the class of beneficiary to whom it refers, fairly encompasses a vested beneficiary subject to divestiture”); *Estate of Necastro*, No. C.A. 10,538, 1991 WL 29958, at \*1 (Del. Ch. Feb. 28, 1991) (rejecting a “restrictive reading” of “beneficiary” under 12 Del.C. § 2302(d) and instead holding that “Exceptants [whom the parties characterized as “contingent beneficiaries”] have standing . . . based upon their indirect interest in a share of the estate through their status as beneficiaries of a testamentary trust”). In short, neither the applicable Delaware statute nor Delaware case law limits the term “beneficiary” to vested beneficiaries, to the exclusion of contingent ones.

47. Defendants argue, incorrectly, that the language of the CTA purportedly strips Plaintiffs of standing. In particular, Defendants argue that the CTA provides that holders of Contingent Trust Interests (including Plaintiffs) “shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the ‘GUC Payment Certification’).”<sup>50</sup> They further argue that the agreement provides that “Equity Holders will be deemed ‘Beneficiaries’ under this Agreement only upon the filing of a GUC Payment Certification with the Bankruptcy Court.”<sup>51</sup> But Delaware law makes clear that a trust agreement, however worded, may not strip the trustee’s duty of good faith and fair dealing and, importantly, the

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<sup>50</sup> CTA, Bankr. Dkt. 3521-5 at § 5.1(c).

<sup>51</sup> *Id.*

CTA does not disclaim any such duties.<sup>52</sup> Here, observance of that duty precludes the argument that the language of the CTA destroys Plaintiffs' standing.

48. Under Delaware law, unless the governing trust agreement says otherwise, the trustee of a statutory trust has those duties set forth in common law, including the duties of loyalty, good faith, and due care. *See* Del. Code Ann. tit. 12, § 3809; *Rende v. Rende*, No. 2021-0734-SEM, 2023 WL 2180572, at \*11 (Del. Ch. Feb. 23, 2023). And while a governing trust agreement may expressly disclaim these duties (although this one does not), Delaware law prohibits the elimination of the duty of good faith and fair dealing. *In re National Collegiate Student Loan Trusts Litigation*, 251 A.3d 116, 185-86 (Del. Ch. 2020) (“While parties may agree to waive default fiduciary duties, the DSTA forbids parties from eliminating the “implied contractual covenant of good faith and fair dealing.”) (citing Del. Code. Ann. tit. 12, § 3806(c)).

49. Here, the duty of good faith and fair dealing is particularly important where Plaintiffs' status as “beneficiaries” under the Agreement is purportedly dependent upon Mr. Seery's discretion to file a GUC Certification declaring them as such. “Stated in its most general terms, the implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain.” *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. 2005) (internal quotations omitted).

50. As other RESTATEMENT jurisdictions have recognized, Mr. Seery's refusal to give the GUC Certification and recognize Plaintiffs vesting of Classes 10 and 11 warrants treating those classes as fully vested. “[V]esting cannot be postponed by unreasonable delay in distributing an estate and [...] when there is such delay, contingent interests vest at the time distribution *should* have been

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<sup>52</sup> The CTA is governed by Delaware law. *Id.* at § 11.10.

made.” *Estate of Cornell v. Johnson*, 367 P.3d 173, 178 (Idaho 2016) (emphasis added) (discussed in RESTATEMENT (SECOND) OF TRUSTS § 198 (1959)); *see also Edwards v. Gillis*, 146 Cal.Rptr.3d 256, 263 (Cal. Ct. App. 4 Dist., 2012) (“when there is [unreasonable] delay contingent interests vest at the time distribution should have been made.”).

51. As set forth above, the Claimant Trust had sufficient assets to pay unsecured creditors in Classes 8 and 9 in full with interest at least as early as May 2023, and in all probability as early as September 2022.<sup>53</sup> And the CTA requires Mr. Seery as Claimant Trustee to “make timely distributions and not unduly prolong the duration of the Claimant Trust.”<sup>54</sup> Had Mr. Seery fulfilled that mandate, he could and should have distributed remaining funds to Classes 8 and 9 in July 2023 at the latest, filed the GUC Certification with the Court, and begun distributing remaining assets to Classes 10 and 11. In short, Plaintiffs’ contingent interests *should have vested* many months ago. Therefore, the law treats Plaintiffs as Claimant Trust Beneficiaries regardless of the language of the CTA.

52. In sum, the Plan defines the “Contingent Claimant Trust Interests” to include the Claimant Trust Interests distributed to Holders of Class A, B, and C Limited Partnership Interests.<sup>55</sup> The CTA defines “Contingent Trust Interests” to be the contingent interests in the Claimant Trust to be distributed to the Class A, B, and C Limited Partnership Interests.<sup>56</sup> Finally, the CTA defines “Claimant Trust Beneficiaries to include Class A, B and C Limited Partnership Interests upon the filing of the GUC certification.<sup>57</sup> Class A, B and C Limited Partnership Interests are intentionally defined as contingent or secondary beneficial interests in the Plan and the CTA and are therefore not

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<sup>53</sup> Two of the estate’s major private equity positions sold in May 2022, and the remaining largest positions sold in September 2022. The May 2022 assets were Cornerstone Healthcare Group [*see* App. 05-09] and MGM [*see* App. 01-04]. The September 2022 positions were CCS Medical [*see* App. 10-14] and Trussway [*see* App. 15-17].

<sup>54</sup> CTA, Bankr. Dkt. 3521-5 at § 3.2(a).

<sup>55</sup> *See* Plan at Art. I, § B, ¶ 44.

<sup>56</sup> *See* CTA ¶ 1.1(m).

<sup>57</sup> *Id.*, ¶¶ 1.1(h) and 5.1(c).

mere incidental or third-party beneficiaries.<sup>58</sup> Plaintiffs have standing and a right to seek the information that they request in their Complaint.

**2. Plaintiffs' accounting claim is sufficient under Delaware and Texas law.**

53. Defendants also argue that Count One must be dismissed to the extent it is treated as an equitable accounting claim. Motion at ¶ 43. Specifically, Defendants argue that an accounting is not a cause of action in equity but only an equitable remedy where a fiduciary may be compelled to provide an account for property subject to trust. Defendants further argue that here, the CTA governs the rights of the parties and does not provide Plaintiffs as holders of Contingent Trust Interests with any rights. Motion at ¶ 44. Defendants are wrong once again.

54. Initially, as explained immediately above, Plaintiffs have legal rights, including a right to an accounting that under Delaware law, including the Delaware Statutory Trust Act, as well as the CTA. Therefore, Count One is proper under Delaware law.

55. Alternatively, Plaintiffs are entitled to bring an accounting claim under Texas law. “Questions of substantive law are controlled by the laws of the state where the cause of action arose, but matters of remedy and procedure are governed by the laws of the state where the action is sought to be maintained.” *Wells Fargo Bank Texas, N.A. v. Foulston Siefkin LLP*, 348 F. Supp. 2d 772, 783 (N.D. Tex. 2004), *vacated on other grounds*, 465 F.3d 211 (5th Cir. 2006). Defendants assert that an action for an accounting “is an equitable remedy.” Motion at ¶ 43. Thus, Defendants arguments based on Delaware law are misplaced because the law of the state where the action is sought to be maintained, Texas, applies in this regard. Motion at ¶¶ 39–45.

56. Under Texas law, courts have jurisdiction over claims seeking to “determine the powers, responsibilities, duties, and liability of a trustee,” including “claims for a trust accounting.”

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<sup>58</sup> See also *Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”*: Denying Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding, Bankr. Dkt. 3903, at p. 2.

*Berry v. Berry*, 646 S.W.3d 516, 527–28 (Tex. 2022). “Any interested person” may bring such a claim. *Id.* (citation omitted). An “interested person” includes a “beneficiary” as well as any other “person who is affected by the administration of the trust.” *Id.* at 528 (citation omitted). A “beneficiary” is “a person for whose benefit property is held in trust, regardless of the nature of the interest.” *Id.* (citation omitted). An “interest” includes “any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.” *Id.* (citation omitted). “Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.” *Id.* (citation and internal marks omitted).

57. In this case, the Plan created the Claimant Trust, which was established for the benefit of Claimant Trust Beneficiaries. Complaint at ¶ 64. “Claimant Trust Beneficiaries” include, by definition, “Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.” Complaint at ¶ 64. Plaintiffs are holders of those partnership interests. Complaint at ¶¶ 53–59. As explained above, because Plaintiffs are beneficiaries of the Claimant Trust, they may bring claims under Texas law against the Claimant Trust for a trust accounting.

58. Defendants argue that Plaintiffs cannot sue for an accounting because their interests are contingent. Motion at ¶ 38. But under Texas law, the holder of “any interest, whether legal or equitable or both, present or future, vested *or contingent*, defeasible or indefeasible,” as “may vary from time to time,” may bring a claim for an accounting against the trustee. *Hill v. Hunt*, No. CIV.A. 3:07-CV-2020-, 2009 WL 5178021, at \*2 (N.D. Tex. Dec. 30, 2009) (citing Tex. Prop. Code § 111.004(6)).

59. Further, because Plaintiffs can request an accounting under Texas law, Defendants’ objection to Plaintiffs’ claims for declaratory relief necessarily fails because, contrary to Defendant’s

failed assertion, Plaintiffs have stated an underlying cause of action for the declaratory relief (an accounting). Motion at ¶¶ 46–47.

3. **Defendants have not adequately demonstrated that either Plaintiff has unclean hands.**

60. Defendants argue without authority that HMIT should be denied relief as a result of its “unclean hands.” Motion at ¶ 45. Defendants’ only support for this claim is a one-sentence reference to a currently pending lawsuit against HMIT, among others, for breach of a promissory note.<sup>59</sup> Not only was this lawsuit brought by a different party than those involved in this litigation, but Defendants fail to provide any evidence of any wrongdoing by HMIT (let alone Dugaboy) other than bald conclusory allegations in a complaint, let alone evidence of wrongdoing related to the allegations in this dispute.

F. **Counts Two and Three Sufficiently State a Claim for Declaratory Judgment.**

61. Defendants argue that Counts Two and Three, which seek declaratory relief, also fail to state a claim under Fed. R. Civ. P. § 12(b)(6) because they are based on Count One, and Count One is not a cognizable claim. Motion at ¶ 47. For the reasons discussed above, Count One does state a valid claim and therefore Counts Two and Three should not be dismissed.

62. Defendants also argue, without authority, that the value of the assets and liabilities of the Clamant Trust at any given point in time is irrelevant to whether Plaintiffs’ Contingent Trust Interests are likely to vest because the Contingent Trust Interests cannot vest until several conditions are satisfied, including the liquidation of assets and expenses being paid. Motion at ¶ 48. Specifically, Defendants argue that “until these and other critical variables are known, the financial information Plaintiffs seek in their Complaint is meaningless for purposes of determining ‘vesting’”<sup>60</sup> and therefore there is no controversy underlying these claims. Even if Defendants were correct, and they

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<sup>59</sup> Motion at ¶ 45.

<sup>60</sup> *Id.* at ¶ 48.

are not, and these other variables must be determined first, the financial information sought by Defendants is exactly the information that will be necessary under the CTA to determine these variables and to determine when and how much Plaintiffs will be paid once these events occur. Defendants, of course, do not dispute this. In other words, it is nonsensical to claim that the requested information is “meaningless” just because the amounts payable to Plaintiffs may change in the future. The exact amounts do not need to be established at this time. The Court should decline Defendants’ request to dismiss Counts Two and Three.

#### IV. CONCLUSION

63. Wherefore, Plaintiffs respectfully request that the Court deny the Motion in its entirety and grant any further relief as the Court deems proper and just.

Respectfully submitted,

**STINSON LLP**

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*Counsel for The Dugaboy Investment Trust and the  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 29, 2023 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

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

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

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

**APPENDIX IN SUPPORT OF THE DUGABOY INVESTMENT TRUST AND HUNTER  
MOUNTAIN INVESTMENT TRUST’S RESPONSE TO THE HIGHLAND PARTIES’  
MOTION TO DISMISS COMPLAINT TO (I) COMPEL DISCLOSURES ABOUT THE  
ASSETS OF THE HIGHLAND CLAIMANT TRUST and (II) DETERMINE (A)  
RELATIVE VALUE OF THOSE ASSETS, and (B) NATURE OF PLAINTIFFS’  
INTEREST IN THE CLAIMANT TRUST**

Dugaboy Investment Trust and Hunter Mountain Investment Trust file this Appendix in Support of its Response to the Highland Parties’ Motion to Dismiss Complaint and requests the Court take judicial notice of the documents contained herein.

Ex.	Date	Case	Dkt.	Document	Appendix Page(s)
1	3/17/22			Article: Amazon closes deal to buy MGM movie studio	App. 01-04
2	5/12/22			Article: ScionHealth Announces Definitive Agreement to Acquire Cornerstone Healthcare Group	App. 05-09
3	8/10/22			Article: CCS Announces Company Expansion Focused on Accelerating Innovation in Home-Based Diabetes Care Management	App. 10-14
4	9/1/22			Article: Builders FirstSource Closes Acquisition of Trussway	App. 15-17
5	6/1/23	21-00881	158	Notice of Appeal to United States Court of Appeals for the Fifth Circuit	App. 18-21

Dated: December 29, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 29, 2023, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/Deborah Deitsch-Perez* \_\_\_\_\_

Deborah Deitsch-Perez

# Exhibit 1



MEDIA

# Amazon closes deal to buy MGM movie studio

PUBLISHED THU, MAR 17 2022·9:55 AM EDT UPDATED THU, MAR 17 2022·10:32 AM EDT



WATCH LIVE

## KEY POINTS

Amazon on Thursday said it had closed its \$8.5 billion deal to buy MGM, combining the fabled movie maker behind “Rocky” and “James Bond” with the online retailing giant.

Its decision to close comes after a deadline passed for the U.S. Federal Trade Commission to challenge the deal.

MGM bolsters Amazon Prime Video’s offering with more than 4,000 film titles.

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Pavlo Gonchar | LightRocket | Getty Images

[Amazon](#) on Thursday said it had closed its \$8.5 billion deal to buy MGM, combining the fabled movie maker behind “Rocky” and “James Bond” with the online retailing giant as it looks to draw consumers through more streaming video.

In a statement, Amazon said it would welcome all MGM employees to the company and work with the studio’s leadership, indicating there would not be layoffs. Its decision to close comes after a deadline passed for the U.S. Federal Trade Commission to challenge the deal.

The Seattle-based retailer announced the transaction in May 2021, saying MGM offered a trove of content to draw consumers to its fast-shipping and streaming club Prime, which costs \$14.99 per month in the United States.

Nearly a year later, Amazon is clear of regulatory hurdles. The European Commission approved the deal Tuesday, with no conditions. Likewise, Amazon earlier informed the FTC that it had “substantially complied” with requests for information about the deal.

The FTC declined comment.

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year's Oscar-nominated [Leone's Pizza](#) and a long list of television shows that may help Amazon compete with streaming rivals [Netflix](#) and [Disney](#) +.

Hopkins praised MGM's "broad slate of original films and television shows."

"We welcome MGM employees, creators, and talent to Prime Video and Amazon Studios, and we look forward to working together to create even more opportunities to deliver quality storytelling," he said in a statement.

The FTC has a broader probe open into Amazon as part of government antitrust investigations begun under the Trump administration into the four big tech platforms, including Facebook and Google.

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In this article

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**TRENDING NOW**



Mark Cuban shares the No. 1 jargon word he hates most: 'You sound stupid ... trying to sound smart'



Couple has \$520,000 in debt—and wife had no idea: 'We've been living a life we shouldn't be living'



Former Trump lawyer Rudy Giuliani files for bankruptcy protection, lists more than \$100M in debts

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# Exhibit 2

# ScionHealth Announces Definitive Agreement to Acquire Cornerstone Healthcare Group

NEWS PROVIDED BY  
**ScionHealth** →  
12 May, 2022, 15:00 ET



ScionHealth Logo (PRNewfoto/ScionHealth)



Cornerstone Healthcare Group Logo

*Combination strengthens ScionHealth's position as a leading healthcare delivery network committed to investing in community healthcare*

LOUISVILLE, Ky. and DALLAS, May 12, 2022 /PRNewswire/ -- ScionHealth and Cornerstone Healthcare Group ("Cornerstone") today announced that they have entered into a definitive agreement for ScionHealth to acquire Cornerstone. The combination of the two patient-focused and quality-driven organizations will strengthen ScionHealth's position as a leading healthcare delivery network, expanding services, resources, and expertise to grow and invest in the health and well-being of patients and employees in communities nationwide.



The addition of Cornerstone's locations will enhance ScionHealth's ability to advance access to high-quality care and implement innovative solutions to improve the patient experience. The transaction expands ScionHealth's national network of long-term acute care hospitals, community-based hospitals and physician practices to deliver life-saving care solutions for the nation's most medically complex patients.

ScionHealth was **established in late 2021** with a focus on investment in community healthcare and grounded in commitments to outstanding patient care and quality outcomes. The acquisition of Cornerstone is the first step in executing ScionHealth's strategic plan for growth and innovation.

"When we launched ScionHealth, we knew our portfolio would serve as a strong platform for growth," said Rob Jay, chief executive officer of ScionHealth. "Adding Cornerstone to ScionHealth is a significant first milestone and reflects our commitment to deliver high-quality healthcare solutions in the communities we serve. We are excited to welcome Cornerstone's talented group of employees and providers into the ScionHealth family. Cornerstone shares our values, as well as a similar focus on advancing clinical and quality excellence to benefit patients, pursue innovative solutions, and make healthcare more accessible. Additionally, today's announcement reinforces ScionHealth's commitment to being an active member of the Louisville business community, as well as a strong employer in Louisville and the other communities where our team members live and work across the U.S."

"This combination with ScionHealth confirms Cornerstone's commitment to quality care," said Steve Jakubcanin, chief executive officer and president. "We are proud to join an organization that puts people first and shares our vision to deliver best-in-class healthcare innovation and clinical expertise. We look forward to the benefits this combination will have for our team members and those we serve."

Upon the completion of regulatory approvals and satisfaction of customary closing conditions, the acquisition of Cornerstone is expected to be completed in the second half of 2022. Cornerstone Specialty Hospitals Clear Lake and Cornerstone Specialty Hospitals Houston Medical Center are excluded from the acquisition.

**About ScionHealth**  
ScionHealth strives to provide high-quality, patient-centered acute and post-acute hospital solutions. The health system is focused on driving innovation, serving its communities, and investing in people and technology to deliver compassionate patient care and excellent health outcomes. Based in Louisville, ScionHealth operates 79 hospital campuses in 25 states – 61 long-term acute care hospitals and 18 community hospital campuses and associated health systems. For more information, please visit [www.scionhealth.com](http://www.scionhealth.com).

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**About Cornerstone Healthcare Group**

Cornerstone Healthcare Group Holding, Inc. is a diversified healthcare company based in Dallas, Texas. Cornerstone's mission is to make a difference by providing exceptional care and delivering the best experience to all who they serve. For more information, visit [www.chghospitals.com](http://www.chghospitals.com).

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**Forward-Looking Statements**

This communication contains certain information, including statements as to the expected timing, completion and effects of the proposed transaction involving ScionHealth and Cornerstone Healthcare Group, which may constitute forward-looking statements. Such forward-looking statements are subject to risks and uncertainties, and actual results may differ materially. Such forward looking statements include, among others, statements about the benefits of the proposed transaction, including future financial and operating results, plans, objectives, expectations for ScionHealth and other statements that are not historical facts. See

Case 23-03038-sgj Doc 18-2 Filed 12/29/23 Entered 12/29/23 18:40:18 Desc  
Case 3:24-cv-01531-X Document 20-1 Filed 01/02/24 Page 139 of 236 PageID 2999

statements are based on the current beliefs and expectations of management and are subject to significant risks and uncertainties outside of its control. These risks and uncertainties include, among others: the possibility that the anticipated benefits from the proposed transaction will not be realized, or will not be realized within the expected time periods; the occurrence of any event, change or other circumstances that could give rise to termination of the proposed transaction agreement or cause the proposed transaction not to close within the anticipated timeline or at all; risks associated with the disruption of management's attention from ongoing business operations due to the proposed transaction; risks associated with the retention of key employees; and the inability to obtain necessary regulatory approvals of the proposed transaction or the receipt of such approvals being subject to conditions that are not anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Except as otherwise required by law, neither ScionHealth nor Cornerstone Healthcare Group undertakes any obligation, and expressly disclaims any obligation, to update, alter or otherwise revise any forward-looking statements, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

SOURCE ScionHealth

# Exhibit 3

# CCS Announces Company Expansion Focused on Accelerating Innovation in Home-Based Diabetes Care Management



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NEWS PROVIDED BY

**CCS →**

10 Aug, 2022, 08:00 ET

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*A leader in home-delivered medical supplies for individuals living with chronic conditions, CCS is expanding its patient education, monitoring, and coaching services to unify the patient experience*

DALLAS, Aug. 10, 2022 /PRNewswire/ -- [CCS](#), which now includes CCS Medical and CCS Health, has announced an expansion of its business. The company – a leading provider of home-delivered medical supplies for those living with diabetes or other chronic conditions – will be expanding the education, monitoring, and coaching services it offers to create a more collaborative approach to care. This new model incorporates the delivery of products with access to accredited clinicians supported by proprietary data and technology to simplify the patient experience. In addition, CCS has created a new strategic advisory board and added three new advisory board members to help redefine chronic care management at home.

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CCS supports more than 200,000 patients living with chronic conditions in the United States and delivers more than 1.2 million shipments of medical supplies to patients in their own homes. Through its Health and Medical units, CCS works with more than 400 employers and more than 1,800 managed care plans nationally to offer a more hands-on, educational approach to supporting their population of patients with diabetes. After over a quarter of a century delivering medical supplies and more than a decade providing chronic care management services for individuals living with diabetes, CCS has the experience, data, and patient and provider relationships in place to create a new era of patient-driven, proactive chronic care management.

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## **CCS is expanding its patient education, monitoring, and coaching services to unify the patient experience.**

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CCS now has two main divisions. First, CCS Health couples high-touch, human engagement with technology to assist patients with education and coaching on disease management and product adoption. Second, CCS Medical offers the most advanced technology and trusted brand names in continuous glucose monitoring and insulin pump therapy, along with the other medical product and device needs of the patient.

With CCS as their partner, patients are more likely to get on therapy and stay on therapy, improving patient outcomes and reducing costs. For example, CCS tracked an average drop of 1.15 points in patient A1C values for a large national health plan as part of CCS's LivingLinked™ offering, which is a clinical education program. Also, CCS's diabetes clinical care management program, called LivingConnected®, with a large employer group yielded a cost reduction of 45% for those enrolled vs. not enrolled.

"The LivingConnected program through CCS has increased adherence to the diabetes standards of care, improving the health of our employees and their spouses with diabetes, while generating substantial savings for program participants," said Heather Hormel, Senior

had with our employee population, any organization like ours would embrace a solution that can deliver the clinical and financial results we've achieved through the partnership with CCS."

"The number of people being diagnosed with diabetes in the United States has been on the rise and is expected to continue to accelerate – and the pandemic has only made things worse," said Tony Vahedian, CEO of CCS. "It's clear how we have historically provided care to patients with diabetes needs to evolve. That's why we made the decision to accelerate updates to our own business model. These changes will enable our team to surround patients with the tools, resources, and support they need to manage their own care in a simpler way."

As part of the company's expansion, CCS kicked off a new Strategic Advisory Board to help integrate additional trusted clinical and technological leadership guidance as part of this business transition. The distinguished experts in their field who comprise the CCS Strategic Advisory Board include:

- **Francine Kaufman, MD** – Distinguished Professor Emerita of Pediatrics at the Keck School of Medicine of the University of Southern California and Children's Hospital Los Angeles. Francine is also a practicing endocrinologist, as well as the former president of the American Diabetes Association.
- **Christos M. Cotsakos, Ph.D.** – Founder, chairman, and CEO of Pennington Ventures, a digital transformation, financial, and strategic management firm. He is the former chairman and CEO of E\*TRADE and took the company public in 1996 as one of a handful of internet entrepreneurs and pioneers. He also served as global co-CEO of AC Nielsen and co-founded ArrowPath Venture Capital. Christos has held senior strategic roles at the intersection of healthcare and technology for more than 25 years.
- **Jean-Claude Saghbini** – Chief Technology Officer at Lumeris. With decades of technology leadership experience, he has held leadership positions at a wide array of healthcare companies, including Wolters Kluwer Health and Cardinal Health.

"Considering the majority of people with newly diagnosed diabetes do not receive adequate care management education and training in the first year, it's no surprise that the healthcare industry and employers continue to grapple with less than optimal adherence and outcomes with this population of patients," said Dr. Kaufman. "I'm excited to join the advisory board at ☞

Case 23-03038.sqj Doc 18-3 Filed 12/29/23 Entered 12/29/23 18:40:18 Desc  
Case 3:24-cv-01531-X Document 3-1 Filed 01/02/24 Page 144 of 236 PageID 3004  
CCS – they understand that with the right supplies, personalized education, ongoing coaching, and home-based monitoring, people living with diabetes can achieve improved health outcomes."

To learn more about CCS and their integrated approach to redefining home-based chronic care management, visit [CCSMed.com](https://CCSMed.com).

## **About CCS**

CCS is a leading provider of clinical programs and home-delivered medical supplies for those living with chronic conditions, particularly diabetes. CCS supports 200,000+ patients living with chronic conditions in the United States and delivers more than 1.2 million shipments of medical supplies to patients in their own homes each year. The company works specifically with health plans and employers to offer both technology and hands-on educational services to holistically support patients living with diabetes. After serving patients for more than 25 years, CCS has the experience, data, and patient and provider relationships in place to create a new era of home-based, proactive chronic care management. Entities managed by Riva Ridge Capital LP are the primary shareholder of CCS. To learn more about CCS, please visit: [CCSMed.com](https://CCSMed.com); [LinkedIn](#); and [Twitter](#).

## **Media Contact:**

KT McGraw

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SOURCE CCS

# Exhibit 4



**Source:** Builders FirstSource, Inc.

September 01, 2022 16:01 ET

## **Builders FirstSource Closes Acquisition of Trussway**

***Strengthens Company's roof and floor truss value-added products, including a multifamily presence in key high-growth markets***

***Anticipated to generate robust free cash flow within first 15 months***

DALLAS, Sept. 01, 2022 (GLOBE NEWSWIRE) -- [Builders FirstSource, Inc.](#) (NYSE: BLDR) ("BFS" or the "Company"), the nation's largest supplier of structural building products and value-added components and services, today announced it has acquired Trussway, a leading provider of pre-fabricated roof and floor trusses as well as value-added building components and services, including for the multifamily sector, with annualized sales of approximately \$340 million.

"We are thrilled that Trussway will now be an integral part of Builders FirstSource. Since 1972, Trussway has been a supplier of choice to customers due to its ability to routinely deliver high quality products and services," said Dave Flitman, President and CEO of Builders FirstSource. "The addition of Trussway expands our footprint with our roof and floor truss offerings, including for multifamily customers, and enhances our value-added portfolio to better serve our customers and accelerate growth. We are excited to welcome the Trussway team, with its long-standing customer relationships and track record of profitable growth, into the Builders FirstSource family."

Headquartered in Houston, and with 1,000 employees nationwide, Trussway benefits from customer relationships across the ecosystem of owners, developers, general contractors and framers. Trussway serves more than 340 customer accounts in the U.S., and its average relationship with its top 25 customers is over 10 years. Trussway's innovative in-house estimating, design and engineering approach will be complementary to BFS, and the Company anticipates it will lead to synergies across its portfolio. As part of the acquisition, Builders FirstSource is adding Trussway's integrated network of six strategically located manufacturing facilities across the U.S.

"Trussway is honored to be a part of the BFS family," said Jeff Smith, President and CEO of Trussway. "For 50 years, Trussway associates have worked hard at building this company into a leading truss manufacturer. We look forward to bringing, and building on, our high intensity approach to safety, quality, service, production and customer satisfaction with the BFS Team."

The purchase of Trussway will be funded through cash on hand and the Company's ABL.

### **Advisors**

Rothschild & Co. served as financial advisor to Trussway and Latham & Watkins LLP served as its legal counsel. Alston & Bird LLP served as BFS's legal counsel.

## About Builders FirstSource

Headquartered in Dallas, Texas, Builders FirstSource is the largest U.S. supplier of building products, prefabricated components, and value-added services to the professional market segment for new residential construction and repair and remodeling. We provide customers an integrated homebuilding solution, offering manufacturing, supply, delivery and installation of a full range of structural and related building products. We operate in 42 states with approximately 560 locations and have a market presence in 47 of the top 50 and 85 of the top 100 MSA's, providing geographic diversity and balanced end market exposure. We service customers from strategically located distribution and manufacturing facilities (certain of which are co-located) that produce value-added products such as roof and floor trusses, wall panels, stairs, vinyl windows, custom millwork and pre-hung doors. Builders FirstSource also distributes dimensional lumber and lumber sheet goods, millwork, windows, interior and exterior doors, and other building products.

## Forward-Looking Statements

Statements in this news release and the schedules hereto that are not purely historical facts or that necessarily depend upon future events, including statements about forecasted financial performance or other statements about anticipations, beliefs, expectations, hopes, synergies, intentions or strategies for the future, may be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Readers are cautioned not to place undue reliance on forward-looking statements. In addition, oral statements made by our directors, officers and employees to the investor and analyst communities, media representatives and others, depending upon their nature, may also constitute forward-looking statements. As with the forward-looking statements included in this release, these forward-looking statements are by nature inherently uncertain, and actual results may differ materially as a result of many factors. All forward-looking statements are based upon information available to Builders FirstSource on the date this release was submitted. Builders FirstSource undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Any forward-looking statements involve risks and uncertainties that could cause actual events or results to differ materially from the events or results described in the forward-looking statements, including risks or uncertainties related to the continuing COVID-19 pandemic and its impact on the economy, the Company's acquisitions and continued ability to identify and consummate attractive acquisitions, the Company's growth strategies, including gaining market share and its digital strategies, or the Company's revenues and operating results being highly dependent on, among other things, the homebuilding industry, which in turn is dependent on economic conditions, lumber prices and the economy, including interest rates, inflation and labor and supply shortages. Builders FirstSource may not succeed in addressing these and other risks. Further information regarding factors that could affect our financial and other results can be found in the risk factors section of Builders FirstSource's most recent annual report on Form 10-K filed with the Securities and Exchange Commission (the "SEC") and in the other reports Builders FirstSource files with the SEC. Consequently, all forward-looking statements in this release are qualified by the factors, risks and uncertainties contained therein.

## Investor Contact

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# Exhibit 5

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

<b>In re</b>	§	
	§	<b>Civ. Act. No. 3:21-cv-0881-x</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	§	
	§	<b>Consolidated with:</b>
	§	<b>3:21-cv-0880-x</b>
<b>Reorganized Debtor/Plaintiff,</b>	§	<b>3:21-cv-1010-x</b>
	§	<b>3:21-cv-1378-x</b>
<b>v.</b>	§	<b>3:21-cv-1379-x</b>
	§	<b>3:21-cv-3160-x</b>
<b>NEXPOINT ASSET MANAGEMENT, L.P. (f/k/a HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.), et al.,</b>	§	<b>3:21-cv-3162-x</b>
	§	<b>3:21-cv-3179-x</b>
	§	<b>3:21-cv-3207-x</b>
	§	<b>3:22-cv-0789-x</b>

**Defendants.**

**NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

James Dondero (“Dondero”), defendant in Civ. Act. No. 3:22-cv-0881-x (consolidated with the above-captioned matters) and the adversary proceeding styled *Highland Capital Management, L.P. vs. James Dondero, et al.*, Adversary Proceeding No. 21-03003-sgj, appeals to the United States Court of Appeals for the Fifth Circuit from the following orders of the District Court for the Northern District of Texas: (1) the AMENDED FINAL JUDGMENT AGAINST JAMES DONDERO entered in this consolidated case as Dkt. 148 on August 3, 2023, and (2) Electronic Orders Dkt. 129 and Dkt. 131 (clarified by Electronic Order Dkt. 135, entered on July 6, 2023) which denied as moot the Motion for Ruling on Pending Objections (addressing, *inter alia*, an Objection to Order Denying Motions to Extend Expert Disclosure and Discovery Deadlines).

The parties to the judgment appealed from and the names and addresses of their respective attorneys are as follows:

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Dated: September 1, 2023

Respectfully submitted,

/s/ Deborah Deitsch-Perez

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*Attorneys for Defendant James Dondero*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on September 1, 2023, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez

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and the Highland Claimant Trust*

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

<p>In re:</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,</p> <p style="text-align: center;">Reorganized Debtor.</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p>
<p>DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,</p> <p style="text-align: center;">Defendants.</p>	<p>Adv. Pro. No. 23-03038-sgj</p>

**THE HIGHLAND PARTIES' REPLY IN FURTHER SUPPORT OF  
MOTION TO DISMISS COMPLAINT**

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The Highland Parties, the defendants in the above-captioned adversary proceeding, reply to Plaintiffs' *Response* [Docket No. 17] (the "**Response**") and respectfully submit the following in further support of their Motion seeking to dismiss the Action.<sup>1</sup>

### I. PRELIMINARY STATEMENT

1. The Claimant Trust is a Delaware statutory trust that was created by the Plan and is governed by the Delaware Statutory Trust Act. Under the Trust Act, whether a party is a beneficiary (here, a Claimant Trust Beneficiary) is determined by the plain language of the governing instrument (here, the CTA). Under the CTA, Plaintiffs (a) hold only contingent, unvested interests in the Claimant Trust, (b) are not Claimant Trust Beneficiaries, and (c) will not become Claimant Trust Beneficiaries unless they vest—and Plaintiffs will not vest unless and until all senior claims, including indemnification claims, are indefeasibly paid in full, all contingent claims in Class 8 and 9 are resolved, and the Claimant Trustee has certified as much to this Court, *none* of which has occurred.

2. To avoid the applicable language in the Plan and CTA, Plaintiffs argue—for the first time—that beneficiary status is determined by Delaware common law, not the CTA or the Trust Act. Plaintiffs are wrong. The Act explicitly defines the "beneficial owners" of a Delaware Statutory Trust by reference to the "governing instrument of the statutory trust." In other words, *the CTA determines when and if Plaintiffs are Claimant Trust Beneficiaries*. Under the CTA, Plaintiffs are not Claimant Trust Beneficiaries and have no rights as beneficiaries.

3. In addition to their new legal theory, Plaintiffs continue to assert that this Court should deem them Claimant Trust Beneficiaries because they are "in the money" and are "likely to vest." But this Court has already determined that is not how the CTA or Plan works. Under the

---

<sup>1</sup> Capitalized terms used but not defined herein shall take on the meaning ascribed thereto in the Motion and the *Memorandum of Law* [Docket No. 14] (the "**MOL**") filed in support of the Motion. Further references to the Motion include the MOL.

Plan and CTA, whether Plaintiffs are “in the money” based on estimated assets and liabilities at a particular moment in time has no bearing on whether they have “vested” or are “likely to vest.”

4. Moreover, this Court has already ruled that it lacks “the power to equitably deem HMIT’s Contingent Trust Interest to be vested....” Ultimately, under the Plan, the CTA, and applicable law, Plaintiffs are not Claimant Trust Beneficiaries—and will not become Claimant Trust Beneficiaries unless and until they have actually vested. The Motion should be dismissed under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

## II. REPLY

### A. Plaintiffs Are Not Beneficiaries of the Claimant Trust Under Delaware Law

5. In the Response, Plaintiffs assert a new, but flawed, legal argument as to why they should be considered beneficiaries of the Claimant Trust. Plaintiffs’ argument, however, ignores the statutory law governing the Claimant Trust and the clear language of the Plan and CTA.

6. Plaintiffs argue that Delaware trust law does not define “beneficiary” and that this Court must ignore the CTA and apply the definition of “beneficiary” in the Restatement (Third) of Trusts (the “**Restatement**”). The Claimant Trust, however, is a Delaware statutory trust governed by the Delaware Statutory Trust Act (the “**Trust Act**,” Chapter 38 of Title 12 of the Delaware Code).<sup>2</sup> Contrary to Plaintiffs’ assertions, the Trust Act defines “beneficial owner” and uses that term exclusively to refer to the beneficial owners (*i.e.*, the beneficiaries of a Delaware statutory trust). Under the Trust Act, a trust’s “beneficial owners” are “any owner[s] of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced ... in conformity to the applicable provisions of the governing instrument of the statutory trust.”<sup>3</sup> In other words, a statutory trust’s “beneficial owners” are the parties defined as such in the trust’s governing

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<sup>2</sup> See, e.g., CTA §§ 2.1(a); 11.10.

<sup>3</sup> 12 Del. C. § 3801(a).

instrument.<sup>4</sup> And, because the Trust Act expressly defines “beneficial owners,” the Trust Act expressly precludes the application of any other definition of beneficiary, including that set forth in the Restatement. *See* 12 Del. C. § 3809 (“**Except to the extent otherwise provided in the governing instrument of a statutory trust or in this subchapter**, the laws of this State pertaining to trusts are hereby made applicable to statutory trusts”) (emphasis added).

7. Accordingly, the determination of whether Plaintiffs are “beneficiaries” of the Claimant Trust begins and ends with the CTA, which defines “Claimant Trust Beneficiaries” as:

the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.<sup>5</sup>

Plaintiffs, who hold Class 10 and 11 interests, are not “Claimant Trust Beneficiaries” and “shall not have any rights under” the CTA and will not “be deemed ‘Beneficiaries’” “unless and until” they vest in accordance with the Plan and CTA.<sup>6</sup> The CTA and Plan are clear and unambiguous. Plaintiffs’ attempts to avoid the CTA, the Plan, and applicable law are unavailing.<sup>7</sup>

8. But even if the Restatement’s definition of “beneficiary” applied (it does not), Plaintiffs’ argument would still fail. In *Paul Capital Advisors, LLC*,<sup>8</sup> the Delaware Chancery Court looked to the Restatement to determine whether a party was a “beneficiary” of a Delaware common

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<sup>4</sup> *See In re Nat’l Collegiate Student Loan Trs. Litig.*, 251 A.3d 116, 190 (2020) (relying on the definition of “beneficial owner” under the Trust Act to determine which holders of interests in a statutory trust were owed fiduciary duties under Delaware laws pertaining to all trusts).

<sup>5</sup> CTA, § 1.1(h); Plan, Art. I.B.27.

<sup>6</sup> *See, e.g.*, Plan, Art. I.B.44; CTA, §§ 1.1(h), 5.1(c).

<sup>7</sup> Plaintiffs’ citation to *Estate of Tigani* and *Estate of Necastro*, which stand for the proposition that “statutory language” shouldn’t be interpreted restrictively, is equally unavailing. *See* Response ¶ 46. Whether Plaintiffs are beneficiaries of the Claimant Trust is determined by the Plan and CTA, not a Delaware statute that must be “interpreted.”

<sup>8</sup> *Paul Cap. Advisors, L.L.C. v. Stahl*, 2022 Del. Ch. LEXIS 195 (Del. Ch. Aug. 17, 2022), as corrected (Aug. 25, 2022).

law (*not* statutory) trust. Applying the Restatement’s definition,<sup>9</sup> the Chancery Court found that a trust’s “beneficiaries” are the persons defined as “beneficiaries” in the trust’s governing document:

According to the Defendants, [the fact that the trust agreements specify who the beneficiary is] ends the inquiry—the Plaintiffs are not beneficiaries. I agree. If the language of a trust’s governing document “is unambiguous, the Court looks no further and does not consider extrinsic evidence of intent.” The Court cannot “look to extrinsic evidence to read ambiguity into an unambiguous contract.” This is particularly true where, as here, the Trust Agreements at issue are fully integrated. The Trust Agreements identify only one beneficiary: MHT. “If the drafters of the Trust Agreement[s] ... had intended the [Trust Advisor] to administer the [Exchange] Trusts in the interests of another deal party, the Trust Agreements would have said so.” They do not. It is thus manifest from the language of the Trust Agreements that the settlor, MHT, intended itself to be the only beneficiary.<sup>10</sup>

The Chancery Court, finding that the movant was not a “beneficiary” under the governing instrument, dismissed the action for lack of standing.<sup>11</sup>

9. Likewise, Plaintiffs are not beneficiaries of the Claimant Trust under the clear and unambiguous language of the Plan and CTA. Highland, as settlor, did not “manifest its intention” to include Plaintiffs as beneficiaries. In fact, the Plan and the CTA *expressly exclude* Dugaboy and HMIT from the definition of Claimant Trust Beneficiaries. Plaintiffs are not beneficiaries of the Claimant Trust and lack standing under the CTA and Delaware law<sup>12</sup> to “compel” an accounting.

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<sup>9</sup> Restatement (Third) of Trusts § 48 (“[A] person is a beneficiary of a trust if the settlor manifests an intention to give the person a beneficial interest; a person who merely benefits incidentally from the performance of the trust is not a beneficiary.”)

<sup>10</sup> *Stahl*, 2022 Del. Ch. LEXIS 195 at \*27–\*28.

<sup>11</sup> Plaintiffs’ citation to an Idaho case based on an earlier version of the Restatement or a California case considering a California trust are irrelevant; the issues before the Court concern a Delaware statutory trust governed by Delaware law. CTA §§ 2.1(a); 11.10. Similarly, Plaintiffs’ reliance on Texas law regarding equitable remedies—citing *Wells Fargo Bank Tex., N.A. v. Foulston Siefkin LLP*, 348 F. Supp. 2d 772, 783 (N.D. Tex. 2004), a Texas case about a Texas testamentary trust—is utterly out of place. Plaintiffs’ argument that Texas law could somehow give Plaintiffs more standing than they have as non-beneficiaries under Delaware law, the Plan, and the CTA is misguided. Delaware law applies, and Plaintiffs cite no authority for why Texas law could or should govern. In any event, Plaintiffs’ arguments under Texas law are contingent on their being beneficiaries. Response pg. 21-22 (“[B]ecause Plaintiffs are beneficiaries of the Claimant Trust, they may bring claims under Texas law against the Claimant Trust for a trust accounting”). Plaintiffs are not Claimant Trust Beneficiaries, and their argument fails.

<sup>12</sup> Plaintiffs state that “as explained immediately above, Plaintiffs have legal rights, including a right to an accounting that [*sic*] under Delaware law, including the Delaware Statutory Trust Act, as well as the CTA.” Response, ¶ 54. Plaintiffs’ conclusory statement is unsupported and unsupportable. Plaintiffs have not “explained” why they have rights; they simply assert they have rights as beneficiaries because they want to be beneficiaries. That is not how the law works.

**B. All Counts Should Be Dismissed for Failure to State a Claim**

10. The gravamen of all three Counts in the Complaint is that the Claimant Trustee must provide Plaintiffs with information sufficient to show that Plaintiffs are “in the money” and then deem them vested Claimant Trust Beneficiaries under the CTA.<sup>13</sup> In asserting their Counts, Plaintiffs admit, as they must, that the CTA—not Delaware common law—governs Plaintiffs’ status as “beneficiaries” of the Claimant Trust. But as this Court has already found, Plaintiffs are not “in the money” and are not, and will not be, Claimant Trust Beneficiaries with rights under the CTA, unless and until they vest in accordance with the terms of the CTA.

11. Counts One and Three Are Moot: This Court previously found that, based on the disclosures in the Pro Forma Adjusted Balance Sheet, HMIT is “not in the money” and not a Claimant Trust Beneficiary. Yet Plaintiffs—despite their admissions in the Motion to Reconsider that the Pro Forma Adjusted Balance Sheet was sufficient to show Plaintiffs were “in the money”—continue to demand information to determine “whether their Contingent Claimant Trust Interests may vest into Claimant Trust Interests” under the CTA. Compl. ¶ 83. The Pro Forma Adjusted Balance Sheet provided that information<sup>14</sup> and showed that Plaintiffs were not “in the money.”<sup>15</sup>

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<sup>13</sup> In fact, Plaintiffs’ motives are highly suspect since they seek “information” to review *all* of the Claimant Trust’s post-effective date transactions, not just to determine whether they are “in the money.” Compl. ¶88 (“Defendants should be compelled to provide information regarding the Claimant Trust assets, including the amount of cash and the remaining non-cash assets, *and details of all transactions that have occurred* since the wall of silence was erected, and all liabilities.”) (emphasis added). This betrays an improper intent to second-guess—and potentially challenge—Highland’s business judgment.

<sup>14</sup> Indeed, Plaintiffs have already received more “information” than actual Claimant Trust Beneficiaries have a right to under the CTA (CTA, §§ 3.12(b); 5.10(a)), and HMIT relied on that information to argue (incorrectly) that it is “in the money.”

<sup>15</sup> Plaintiffs contend that Count One is not moot because they still need additional “detail” and “backup” of the Pro Forma Adjusted Balance Sheet’s numbers. *See* Response ¶¶ 17-27. In so arguing, Plaintiffs stubbornly cling to a false premise—that simply claiming to be “in the money” is relevant to being a Claimant Trust Beneficiary. It is not. Under the CTA, Plaintiffs will not be Claimant Trust Beneficiaries unless and until they vest, which requires, *inter alia*, the indefeasible payment of all senior claims, including indemnification claims.

12. Count Three Seeks an Advisory Opinion: Plaintiffs assert they should be deemed vested Claimant Trust Beneficiaries under the CTA. Plaintiffs allege that vesting is determined by “whether the ‘Claimant Trust assets exceed the obligation of the bankruptcy estate in an amount sufficient so that all Allowable Claims may be indefeasibly paid,’” and therefore is “not dependent upon hypothetical facts.” Plaintiffs are (willfully) misconstruing the terms of the CTA. Whether current Claimant Trust Beneficiaries “may be indefeasibly paid” and contingent claims “likely to vest”<sup>16</sup> is irrelevant. As this Court has found, under the CTA, among other things, Claimant Trust Beneficiaries *must be actually paid in full* before contingent interests will vest, and whether they will be (and whether Plaintiffs will vest) is contingent upon unknown and unknowable facts.

13. Count Three Is Barred by Collateral Estoppel: This Court previously found that Plaintiffs are not “in the money” and cannot be deemed vested under the CTA. *See* Order Denying Leave at \*34-35; Order Denying Reconsideration at 3-4. Plaintiffs maintain that Count Three is not barred by collateral estoppel because the prior decision did not address whether Plaintiffs are “*in the money*’ now” or whether they will “never be ‘*in the money*.’” Response ¶ 37. But the issues of whether Plaintiffs’ contingent interests are “likely to vest” or whether Plaintiffs are “in the money now” are one and the same with the Court’s prior determination that HMIT is not “in the money” because the conditions to vesting in the CTA *have not occurred and remain unknown*. Further, whether HMIT was “in the money” was a “necessary” part of the Court’s prior order. This Court found “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple” and expressly rejected HMIT’s argument that “its Contingent Claimant Trust Interest makes it a contingent beneficiary of the Claimant Trust, which makes it a present

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<sup>16</sup> Compl. ¶ 94.

‘beneficial owner’ under Delaware trust law.” Order Denying Leave at \*34-35.<sup>17</sup> In the Order Denying Reconsideration, the Court reiterated its finding that HMIT is not “in the money” and that its contingent interests have not vested under the Plan and CTA.<sup>18</sup>

### C. Counts Two and Three for Declaratory Relief Fail as a Matter of Law

14. Counts Two and Three, which seek declaratory relief, fail to state plausible claims under Rule 12(b)(6) because there is no underlying controversy. These Counts, seeking declarations (a) regarding the Claimant Trust’s assets and liabilities and (b) whether Plaintiffs’ interests are likely to vest, are premised entirely on Count One. *See* Compl. ¶ 90 (“***Once Defendants are compelled to provide information about the Claimant Trust Assets***, Plaintiffs seek a determination from the Court of the relative value of the Claimant Trust Assets compared to the bankruptcy estate obligations...” (emphasis added)). As discussed, Count One fails as a matter of law because Plaintiffs are not Claimant Trust Beneficiaries and have no right to information—let alone to “compel” the disclosure of information—under the CTA. The relief sought in Count One is also moot. Plaintiffs claim to seek additional financial information for the purpose of knowing whether they are, or will foreseeably be, Claimant Trust Beneficiaries. But this Court has already found that, based on the Pro Forma Adjusted Balance Sheet, they are not. For all the reasons discussed in the Motion and further herein, any additional financial information will not change this result. Because Count One does not present a justiciable controversy

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<sup>17</sup> The Court explained that (i) “HMIT’s status as a ‘beneficiary’ of the Claimant Trust is defined by the CTA itself, pure and simple”; (ii) under the CTA “‘Contingent Trust Interests’ ‘shall not have any rights under this Agreement’ and will not ‘be deemed ‘Beneficiaries’ under this Agreement,’ ‘unless and until’ they vest in accordance with the Plan and the CTA”, and (iii) “[i]t is undisputed that HMIT’s Contingent Trust Interest has not vested under the terms of the Plan and the CTA, and the court does not have the power to equitably deem HMIT’s Contingent Trust Interest to be vested....” *Id.* at \*34-35.

<sup>18</sup> As noted in the Motion, Dugaboy’s interests are aligned with HMIT’s interests regarding whether Contingent Trust Interests have vested, and therefore, privity exists for purposes of collateral estoppel. *See* Motion ¶ 34 n. 17.

underlying Plaintiffs' claims for declaratory relief in Counts Two and Three, all three Counts should be dismissed.

### **III. CONCLUSION**

The Highland Parties respectfully request that the Court grant the Motion, dismiss the Complaint in its entirety, and grant any additional relief the Court deems appropriate.

Dated: January 19, 2024

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*Counsel for Highland Capital Management, L.P., and the  
Highland Claimant Trust*

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

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	)	<b>Case No. 19-34054-sgj-11</b>
In Re:	)	Chapter 11
	)	
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	February 14, 2024
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
<hr/>		
DUGABOY INVESTMENT TRUST,	)	<b>Adversary Proc. 23-3038-sgj</b>
et al.,	)	
	)	
Plaintiffs,	)	
	)	THE HIGHLAND PARTIES' MOTION
v.	)	TO DISMISS COMPLAINT [13]
	)	
HIGHLAND CAPITAL	)	
MANAGEMENT, L.P., et al.,	)	
	)	
Defendants.	)	
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

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Transcribed by: Kathy Rehling  
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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   DALLAS, TEXAS - FEBRUARY 14, 2024 - 9:33 A.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, The Honorable Stacey Jernigan presiding.

5                   THE COURT: Good morning. Please be seated. All  
6 right. We have a setting this morning in the adversary styled  
7 Dugaboy Investment Trust and Hunter Mountain Investment Trust  
8 versus Highland, Adversary 23-3038.

9                   We have the Highland Parties' motion to dismiss the  
10 adversary.

11                  Who is appearing for the Movant, Highland?

12                  MR. MORRIS: Good morning, Your Honor. It's John  
13 Morris from Pachulski Stang Ziehl & Jones for the Movant.

14                  THE COURT: All right. Thank you. And who do we  
15 have appearing for Plaintiffs/Respondents?

16                  MS. DEITSCH-PEREZ: Good morning, Your Honor. It's  
17 Deborah Deitsch-Perez from Stinson.

18                  THE COURT: All right.

19                  MS. DEITSCH-PEREZ: And I would ask: Is anybody else  
20 having a little trouble hearing? The volume seems lower than  
21 usual here.

22                  THE COURT: All right. It's loud and clear for the  
23 Court. What about you, Mr. Morris?

24                  MR. MORRIS: It's no problem for me, Your Honor.

25                  THE COURT: Okay.

1 MS. DEITSCH-PEREZ: Okay. I'll just listen hard.

2 THE COURT: All right. Well, I assume these are the  
3 only appearances we have.

4 As a reminder to folks on the WebEx, if you're a party in  
5 interest, fine, you can use both video and audio. But if you  
6 are not a case party in interest, the rules from Washington  
7 say it's supposed to be only an audio listen-in format for  
8 you.

9 All right. So let me quickly talk about our time issues.  
10 I have to give a CLE presentation on the other side of  
11 downtown at 12:00 noon today, so I really need to stop at  
12 about 11:30 or 11:35. You all have given a two-hour time  
13 estimate, so do you all think that is what you're going to  
14 need, an hour each?

15 MR. MORRIS: I do, Your Honor. I don't know that  
16 I'll need all that time, but I'll try and limit my opening  
17 remarks to 45 minutes and save 15 for rebuttal.

18 THE COURT: All right. What about you, Ms. Deitsch-  
19 Perez? Any issues there?

20 MS. DEITSCH-PEREZ: I would say the same.

21 THE COURT: Okay. Very good. Well, with that, Mr.  
22 Morris, I'll hear from you.

23 OPENING STATEMENT ON BEHALF OF THE MOVANTS

24 MR. MORRIS: Thank you, Your Honor. John Morris;  
25 Pachulski Stang Ziehl & Jones; for the Movant, Highland

1 Capital.

2 Your Honor, in the famous words of an old New Yorker, Yogi  
3 Berra, this is déjà vu all over again. Less than eight months  
4 ago, this Court issued rulings that held that HMIT was not a  
5 Claimant Trust beneficiary because its contingent interests  
6 have not vested. This Court ruled that HMIT was not in the  
7 money. This Court ruled that HMIT's rights as a contingent  
8 trust holder were determined solely with reference to the  
9 Claimant Trust agreement, and under the Claimant Trust  
10 agreement's clear and unambiguous provisions, they have no  
11 rights today.

12 Now, in their complaint, HMIT and Dugaboy basically ask  
13 for the same relief that they sought last year. They want  
14 information for the purported purpose of establishing that  
15 they are in the money, even though they told this Court last  
16 summer, based on available information, that they were in the  
17 money. They want a declaration that the value of trust assets  
18 exceeds the value of the trust liabilities, and they want a  
19 declaration that their contingent interests are likely to  
20 vest.

21 And I'll talk more about this in a moment, but it's really  
22 interesting, if you look at the last footnote of their  
23 complaint, they expressly ask the Court not to rule as to  
24 whether or not they are Claimant Trust beneficiaries. They  
25 only want the Court to rule in a declaratory judgment that

1 they're likely to vest. We'll talk about that more in a  
2 minute.

3 We need clear rulings on each of these matters, on each of  
4 the bases for which Highland moves to dismiss this complaint,  
5 because, you know, obviously, saying it once or twice hasn't  
6 been enough, so we need to say it one more time, loudly and  
7 clearly.

8 I've got a deck that I'll ask Andrea Bates to put up on  
9 the screen. I hope to go through it fairly quickly.

10 THE COURT: Okay.

11 MR. MORRIS: Ms. Bates, if you can put our deck up,  
12 please.

13 And I'd like to begin, once it's on the screen, just going  
14 through the three counts of the complaint. These are the  
15 counts that we're seeking to dismiss. They're -- they are,  
16 frankly, fairly straightforward.

17 (Pause.)

18 MS. BATES: Apologies. I got kicked out of the  
19 WebEx.

20 MR. MORRIS: Okay. (Pause.) Okay, great. If we can  
21 go to the next slide, please.

22 So, the first count, Your Honor, the first count of the  
23 complaint seeks the disclosure of trust assets and accounting,  
24 and an accounting. In Paragraph 83, they make it clear, they  
25 say, due to the lack of transparency into the assets of the

1 Claimant Trust, Plaintiffs are unable to determine whether the  
2 contingent Claimant Trust interests may vest into Claimant  
3 Trust interests. That's really an important allegation,  
4 because it's a concession. And there are other concessions.  
5 If you look at Paragraph 66, for example, it's a concession  
6 that they're not Claimant Trust beneficiaries. They know  
7 that. Right? No dispute. But they're seeking information to  
8 determine whether they may vest. That's what they're asking  
9 for.

10 And the next piece of this slide is also important because  
11 they're not just asking for information about assets and  
12 liabilities. They're asking for "details of all transactions  
13 that have occurred." Even under their theory of trying to  
14 figure out if they're in the money, why could that possibly be  
15 relevant? Details of transactions that have occurred. You  
16 know, Your Honor, we were here before the Court last spring on  
17 the mediation motion, and I recall Your Honor specifically  
18 asking Ms. Ruhland, what information? Because they were  
19 seeking information then for the mediation. What information  
20 could you possibly need other than assets and liabilities?  
21 And she didn't really have an answer.

22 Your Honor asked us -- and ordered us, frankly -- to  
23 produce that information, and we did. And that's the  
24 information that we'll talk about in a moment that HMIT relied  
25 upon to represent to the Court that it believed that the

1 entity was in the money.

2 But the important point here is why are they asking for  
3 details about transactions that have occurred? It's just a --  
4 it's just -- when we talk about the equities at the end, I'm  
5 going to come back to that.

6 The important point here for Count One, Your Honor, they  
7 don't cite to or rely on any provision of the plan. They  
8 don't cite to or rely upon any provision of the Claimant Trust  
9 agreement. They don't cite to or rely upon any statute. This  
10 is a purely equitable claim.

11 If we can go to the next slide, please.

12 Count Two seeks a declaratory judgment concerning the  
13 value of the assets relative to the liabilities, but it's a  
14 conditional request. It requires that the Defendants be  
15 compelled to provide the information. And that's what it says  
16 in Paragraph 90. And it flows from that, according to them,  
17 that if assets exceed liabilities, all kinds of great things  
18 are going to happen. All affirmative proceedings can be  
19 deemed unnecessary. The bankruptcy court -- case can be  
20 brought to a close, and the bloodshed will stop.

21 But what's really interesting about this, and it portrays  
22 the intent of Hunter Mountain in this proceeding, is that they  
23 only want the affirmative proceeding to stop. If you look at  
24 Paragraph 91, and it's quoted there in the footnote, they only  
25 want pending adversary proceedings and get recovering value of

1 the HCMF -- HC -- the Highland estate.

2 So, presumably, they'll be allowed, right, they'll get  
3 paid. All creditors, according to them, if assets exceed  
4 liabilities, they get paid. And then all of the indemnified  
5 parties have nothing to use to defend themselves under the  
6 indemnities. That's what they're looking to do. It's really  
7 clear. And the Court should understand that they're not  
8 really ambiguous here. They want to look at all of the  
9 transactions. They want to, even under their theory that  
10 Class 8 and Class 9 should get paid, they should get  
11 everything else, there should be nothing left, and they should  
12 be able to continue to sue Mr. Seery and the Reorganized  
13 Debtor and the Claimant Trust and my firm from now until the  
14 end of time. That's the motivation here.

15 Let's look at Count Three. Count Three, they want a  
16 declaratory judgment regarding the nature of their interests  
17 in the Claimant Trust. But not really. But not really. What  
18 they want is a declaration and a determination that there are  
19 conditions, that the conditions are such that the contingent  
20 interests are "likely to vest." Again, if you look at the  
21 footnote, and we'll look at it in detail, they're again not  
22 asking the Court, because they know what the answer is going  
23 to be, they're not asking the Court to find that they are  
24 Claimant Trust beneficiaries, just that they are likely to  
25 vest at some point in the future.

1           They don't cite to or rely upon any provision of the plan.  
2           Again, they don't cite to or rely upon any provision in the  
3           Claimant Trust agreement or in any statute. It's a purely  
4           equitable claim.

5           If we can go to the next slide.

6           The terms of the Claimant Trust agreement determine when  
7           and if Plaintiffs are Claimant Trust beneficiaries, full stop.  
8           Under the Delaware Statutory Trust Act, whether a party is a  
9           beneficiary here, a Claimant Trust beneficiary, is determined  
10          by the plain language of the governing instrument -- here, the  
11          Claimant Trust agreement. And the plan, frankly, because the  
12          plan provisions matter in Articles III and IV. They also  
13          provide the same conditions for vesting.

14          We cited in our papers a case called *Paul Capital*  
15          *Advisors*. *Paul Capital Advisors* is from the Delaware Chancery  
16          Court. And what's really interesting about that case, Your  
17          Honor, is in that case the plaintiff was seeking to remove a  
18          trustee. A lawyer by the name of Michael Hurst defended that  
19          case, and Mr. Hurst -- who's a -- Mr. Ellington's counsel  
20          today; he was before Your Honor in December on the Ellington  
21          stalking matter; he's a longtime lawyer for Mr. Dondero -- Mr.  
22          Hurst actually urged the court to dismiss the case on the  
23          grounds that the plaintiff wasn't a beneficiary under the  
24          plain terms of that trust agreement. And the court granted  
25          the motion to dismiss, just like the Court should grant the

1 motion to dismiss today.

2 So one of Mr. Dondero's own lawyers was in the Delaware  
3 Chancery Court making the exact same argument that we're  
4 making today, and that is, even referring to the *Restatement*,  
5 a trust's beneficiaries are the people who are defined as  
6 beneficiaries in the trust governing documents or that are  
7 otherwise reflective of the settlor's intent. That's what  
8 *Paul Capital Advisors* holds.

9 Here, the settlor specifically decided to exclude HMIT and  
10 Dugaboy as holders of the Class 10 and 11 claims from the  
11 definition of Claimant Trust beneficiaries. We know that.  
12 We're going to look at that language in a moment.

13 The Claimant Trust agreement includes very specific  
14 provisions concerning vesting, none of which refer to,  
15 concern, or are dependent on the value of the trust assets and  
16 liabilities at any moment in time.

17 Being in the money is legally irrelevant under the plain  
18 terms of the plan and under the plain terms of the Claimant  
19 Trust agreement and on the plain terms of the case that Mr.  
20 Hurst successfully argued in the Delaware Chancery Court known  
21 as *Paul Capital Advisors*.

22 If we can go to the next slide.

23 Let's look at the provisions. Let's see. Right? Because  
24 one of the bases for the motion to dismiss is that they have  
25 no rights under the plan. Neither Hunter Mountain nor Dugaboy

1 have any rights under the plan. And, you know, if you follow  
2 *Capital Advisors*, and, really, just as the Court did last  
3 summer when it decided, I think properly and appropriately,  
4 that Hunter Mountain and Dugaboy's rights are determined  
5 solely under the provisions of the plan, let's just look at  
6 those provisions.

7 The Claimant Trust agreement, in Section 3.12,  
8 specifically says that the agreement doesn't require the  
9 Claimant Trustee to file any accounting. That's the reasoning  
10 sought in Count One. Can't do it. No. Right? There's no  
11 obligation to do it.

12 If we can go to the next slide.

13 Section 3.12(b) provides -- requires the Claimant Trustee  
14 to provide quarterly reporting to Oversight Board and Claimant  
15 Trust beneficiaries. Again, no allegation that Hunter  
16 Mountain or Dugaboy is an Oversight Board member. No  
17 allegation that they're Claimant Trust beneficiaries. In  
18 fact, the whole purpose of the complaint, supposedly, is to  
19 get information so that they can determine whether or not  
20 they're likely to vest.

21 So, there's a concession that they're not Claimant Trust  
22 beneficiaries. And so only those two groups of people,  
23 Oversight Board members and Claimant Trust beneficiaries, are  
24 entitled to receive these quarterly reports. And because  
25 Hunter Mountain and Dugaboy don't fall into either group, they

1 have no rights under Section 3.12(b).

2 Just to make it abundantly clear -- if we go to the next  
3 slide -- let's look at the definition of Claimant Trust  
4 beneficiary. Again, this is right out of the Claimant Trust  
5 agreement, Section 1.1(h). And it says, holders of allowed  
6 general unsecured claims or allowed subordinated claims, and  
7 only upon the certification of the Claimant Trustee that all  
8 holders of claims have been paid indefeasibly in full. That's  
9 a reference to Class 10 and 11 with the holders of the former  
10 limited partnership interests. Only then do they vest.  
11 That's how they vest. You've got to file this certification  
12 saying that everybody has been paid in full.

13 And they say, oh, gee, well, if assets exceed liabilities,  
14 that must mean they're in the money and the Trustee should  
15 just pay them in full.

16 But that's not what that trust agreement says. And let's  
17 be clear. The trust agreement and the plan were adopted and  
18 confirmed by this Court more than three years ago now. It was  
19 the first week of February 2021. Those documents were subject  
20 to appeal, but nothing we're talking about today is -- was  
21 ever the subject of appeals. Right? So these are the  
22 agreements. They're sacrosanct. The Delaware Chancery Court  
23 says you've got to follow the agreement. So let's do that.

24 If we can go to the next slide.

25 Distributions. So, right, the Claimant Trustee has to

1 certify that everybody has been paid in full. But what about  
2 distributions? When are they going to get paid in full?  
3 According to the plain and unambiguous terms of the Claimant  
4 Trust agreement, the Claimant Trust agreement shall distribute  
5 to holders of trust interests at least annually the cash on  
6 hand -- here's the important word: net -- net of any amounts  
7 that, among other things, if you go down to (d), are necessary  
8 to satisfy or reserve for other liabilities incurred or  
9 anticipated by the Claimant Trustee, in accordance with the  
10 plan and this agreement, including but not limited to  
11 indemnification obligations.

12 So it doesn't matter if assets exceed liabilities. We  
13 don't believe that they do. We don't believe that there is  
14 any reason to even engage in the debate. And the reason for  
15 that is because we've got substantial indemnification  
16 obligations that must be reserved for. And if -- and -- and  
17 -- we'll talk about that more in a moment.

18 But that's the key. That's the key here. They don't  
19 vest. Right? Class 10 and 11 does not vest until the  
20 Claimant Trustee certifies that everybody has been paid in  
21 full. And nobody is going to be paid in full as long as the  
22 Claimant Trust has indemnification obligations that must be  
23 satisfied. The Claimant Trustee is a fiduciary. He owes the  
24 beneficiaries of indemnification rights the duty to make sure  
25 that the Claimant Trust has sufficient assets to satisfy the

1 indemnification obligations.

2       And do you know who's not here today, Your Honor? Any  
3 Claimant Trust beneficiary. Any Claimant Trust beneficiary  
4 who would -- there is nobody here complaining that Mr. Seery  
5 is abusing his rights. There's no -- nobody is complaining  
6 that he should be distributing the cash. Nobody is  
7 complaining that, you know, he's overwithholding. And we'll  
8 talk more about why, actually, what he's doing is proper,  
9 although that's not an issue before the Court today. The only  
10 issue before the Court, frankly, is Section 6.1. And it says  
11 the trust must reserve amounts necessary or deemed necessary  
12 to satisfy indemnity obligations.

13       If we can go to the next slide, please.

14       So now let's get to the motion to dismiss itself now that  
15 we have an understanding of exactly what the Claimant Trust  
16 agreement and the plan provide. Let's look back at what the  
17 Court did. The Court issued two very important rulings last  
18 year on these very issues. And in the Court's lengthy  
19 decision on the Hunter Mountain motion for leave, the Court  
20 concluded, quote, HMIT's status as a beneficiary of the  
21 Claimant Trust was designed by the Claimant Trust agreement  
22 itself, pure and simple. The Court was right then, and the  
23 Court will be right today when presumably it stands by its  
24 prior ruling.

25       Under the Claimant Trust agreement, contingent trust

1 interests have no rights until they vest. And there's no  
2 dispute that they have not vested because the Claimant Trustee  
3 has not filed a certification that everybody is getting paid  
4 in full. That's what the language of the document says. We  
5 really are done here.

6 But there's more, because after that hearing Hunter  
7 Mountain made another motion and said, wait, Your Honor, those  
8 disclosures that you required Highland to make in support of  
9 mediation, they show we're in the money. They've already  
10 swung and they've missed at this. They said, oh, we're in the  
11 money. And Your Honor, unlike HMIT, actually read the  
12 disclosures and actually saw all of the contingencies in  
13 there.

14 It's ironic that HMIT, of all people, would be telling the  
15 Court that they're in the money when their beneficial owners  
16 are actually appealing the \$70 million Notes Litigation, when  
17 their beneficial owners are playing fast and loose with the  
18 value of assets that they control, such as HCRE. Right? But  
19 they're still here with the same tired story, maybe we're in  
20 the money.

21 Your Honor, you've ruled on this and we're done, as far as  
22 I'm concerned. You found, among other things, that they  
23 failed to give proper attention to the notes to the financial  
24 statements that were integral to understanding the numbers. I  
25 hope that they've done that now.

1 Your Honor ruled that they failed to take into account the  
2 widespread litigation that's caused massive indemnification  
3 claims and legal fees, all of which must be satisfied.

4 Based on this Court's decision less than five months ago  
5 -- I think it was actually eight months ago -- Counts One and  
6 Three are moot and they're otherwise barred by collateral  
7 estoppel.

8 If we can go to the next slide, please.

9 Count Two must also be dismissed because it depends on  
10 Highland being "compelled to provide information about the  
11 Claimant Trust assets." That's in Paragraph 90. So if the  
12 Court doesn't compel Highland, the Court has no ability to  
13 make the declaration that's sought.

14 But even if you could, right, there's -- Plaintiffs have  
15 no legally cognizable right. They don't cite to anything.  
16 They don't have an equitable claim to compel Highland to  
17 provide trust -- the information. There is no underlying  
18 controversy to be resolved. They have no right to this  
19 information. They have no equitable claim to this  
20 information.

21 As we set forth in Paragraph 39 of our moving brief, they  
22 can't come here seeking equity that's barred by the plain  
23 terms of the trust agreement. The trust agreement, again,  
24 reflects the settlor's intent. The settlor intended that he  
25 would provide or that the Claimant Trustee would provide

1 limited information to the claimant board members and Claimant  
2 Trust beneficiaries, of which neither Hunter Mountain nor  
3 Dugaboy are one. They can't use equity to just override the  
4 very plain meaning of the operative documents and the intent  
5 of the settlor.

6 The Claimant Trust agreement is determinative. Since the  
7 value of the trust assets and liabilities at any moment in  
8 time is irrelevant to the question of vesting, there is no  
9 justiciable controversy to resolve.

10 So, two reasons. I don't think the Court can order  
11 Highland to produce any information, so it fails for that  
12 reason. And even if it did, the whole issue is completely  
13 irrelevant, given the plain terms of the trust agreement and  
14 the plan, so there is no justiciable controversy.

15 If we can go to the next slide.

16 Some other grounds to dismiss Count One. Right? Again,  
17 no legal right to the information or an accounting. Again,  
18 the request for equitable relief is barred by the plain terms  
19 of the trust agreement since they're not Claimant Trust  
20 beneficiaries.

21 And it's worth noting, as I mentioned earlier when we saw  
22 the very provision in the trust agreement, even Claimant Trust  
23 beneficiaries have no right to an accounting, or any right to  
24 any information beyond that provided in Section 3.12. But,  
25 again, I don't want to suggest that Hunter Mountain or Dugaboy

1 have any entitlement. It's just to contrast where actual  
2 trust beneficiaries lie vis-à-vis Hunter Mountain and Dugaboy.

3 If we can go to the next slide.

4 Other grounds to dismiss Count Three. Again, in Count  
5 Three, Plaintiffs seek a declaration as to whether or not the  
6 Claimant Trust beneficiaries may be indefeasibly paid and  
7 whether the conditions are such that their claimant -- you  
8 know, contingent Claimant Trust interests are likely to vest  
9 into Claimant Trust interests, making them Claimant Trust  
10 beneficiaries, yet another admission that they're not Claimant  
11 Trust beneficiaries today.

12 These are inquiries that would require the Court to, among  
13 other things, handicap the likelihood of Mr. Dondero's appeal  
14 in the Notes Litigation and the amount that is going to be  
15 needed to satisfy future indemnity obligations.

16 I have a reference in this bullet to Docket No. 3880.  
17 Your Honor, that's the other piece of information that I think  
18 the Court required Highland to produce in connection with the  
19 mediation, where we identified all of the outstanding  
20 litigation that we have. You know, we are here today. I was  
21 in Dallas two weeks ago before Judge Scholer to have oral  
22 argument on the Advisors' appeal of the judgment that was  
23 entered in favor of Highland and against them a couple of  
24 years ago.

25 We obviously had a lot of paperwork to deal with on the

1 motion for leave, you know, to sue my firm that was withdrawn  
2 in the face of a Rule 11 motion.

3 You know, these are all things that weren't even on that  
4 list. We've got the appeal now of the original Hunter  
5 Mountain decision. Again, with so many issues on appeal, I  
6 don't even know if the District Court will ever get to the  
7 standing question, because there's like literally dozens of  
8 issues on appeal.

9 We were in Houston last week for a Fifth Circuit argument  
10 on Your Honor's order conforming the plan to the original  
11 Fifth Circuit decision on confirmation.

12 All of these things are expensive. Mr. Dondero is famous  
13 for complaining about how expensive this is, and yet he  
14 continues to drive these costs. This hearing is making it  
15 much less -- it's making it less likely that he's ever going  
16 to be in the money. Every time we have another court  
17 appearance, every time he files another complaint, every time  
18 he, you know, does things to cause us to spend money, his  
19 being in the money -- not that it's legally relevant; I don't  
20 want to make any suggestion that it is -- but that's why we  
21 need these indemnification reserves, because there is no end  
22 in sight.

23 We do have a vexatious litigant motion, Your Honor.  
24 Hopefully, that will be successful. Hopefully, that will  
25 curtail things in the future. But, you know, remains to be

1 seen. That's just something that we feel we need to do.

2 The Plaintiffs tacitly admit that these requests are for  
3 impermissible advisory opinions. Obviously, they are. Any  
4 time you're asking the Court to make a determination about  
5 what's likely to happen in the future that has no legal  
6 significance whatsoever, it's an advisory opinion.

7 And, again, this is what I referred to earlier. If you  
8 look at Footnote 6 to Paragraph 94 of the complaint, oddly,  
9 they don't ask the Court to determine that they're Claimant  
10 Trust beneficiaries. Maybe it's because they've already  
11 admitted that they're not. I don't know. They're not asking  
12 the Court to convert their contingent interests into  
13 noncontingent interests. Again, maybe because they're -- it's  
14 an acknowledgement and an admission that that can't happen.  
15 But here's the tell, because those issues must be done in  
16 accordance with the plan and the CTA. We agreed. There's no  
17 dispute. There is no judiciable, justiciable dispute here.  
18 We agreed that all of these issues are decided by the plain  
19 terms of the plan.

20 I think that's my last slide, so you can take this down.

21 I just briefly want to finish up with just some  
22 observations about equities. As a matter of law, equity can't  
23 trump contractual terms. But if for some reason the Court  
24 even wanted to consider the question, I would ask the Court to  
25 take very seriously Hunter Mountain and Dugaboy's pleadings

1 where they're asking not for information regarding assets and  
2 liabilities, but they want a review of all of the prior  
3 transactions. They want to second-guess everything the  
4 Claimant Trustee has done to date. That smells. Right? And  
5 it's not the first time we've dealt with this issue. You  
6 know, Your Honor can take judicial notice of their pleadings  
7 in the Fifth Circuit when they were appealing that 2015.3  
8 ruling. They explicitly told the Fifth Circuit they want  
9 information so that they can bring more claims. Right?

10 So there's not a good faith basis for this. There's not a  
11 legal basis for it. There's not an equitable basis for it.  
12 The Court has ruled on these issues multiple times already.  
13 There is no judiciable controversy before the Court. And for  
14 all of those reasons, the Court should just dismiss this  
15 complaint.

16 I have nothing further, Your Honor.

17 THE COURT: All right. Mr. Morris, you referred to  
18 the list of pending matters. And last night at 10:00 o'clock  
19 in bed, I meant to pull this up because it was referred to in  
20 one of the pleadings as well, and I didn't do it. Could you  
21 tell me the docket entry that appears at?

22 MR. MORRIS: Yeah, I think it's 3880. I apologize.  
23 I'm actually looking at my phone. I wouldn't typically do  
24 this, but I'm going to see if I can quickly find that. But I  
25 believe it's 3880.

1 THE COURT: Okay.

2 (Court confers with Clerk.)

3 THE COURT: Okay. All right. Ms. Deitsch-Perez?

4 OPENING STATEMENT ON BEHALF OF RESPONDENTS

5 MS. DEITSCH-PEREZ: Thank you. This adversary  
6 proceeding actually has deep roots. It was started by motion  
7 a long time ago, long before that balance sheet was filed.  
8 And it was done because the Claimant Trustee and the estate  
9 have consistently obscured the available resources in order to  
10 make it harder for the residual equity holders to investigate  
11 whether the estate has been mismanaged, to their detriment.

12 THE COURT: Did you say --

13 MS. DEITSCH-PEREZ: Mr. Morris talked --

14 THE COURT: Can I -- you said they've obscured the  
15 resources?

16 MS. DEITSCH-PEREZ: Yes. They've obscured what's in  
17 the estate. If you -- we'll look more closely at that balance  
18 sheet, Your Honor. In addition to not having filed the 2015  
19 reports, the balance sheet, you're right, has a number of  
20 notes on it. But the notes -- and we'll look at those and go  
21 through them -- don't -- don't -- aren't illuminating. If you  
22 look at the face of the balance sheet, there is enough money  
23 to pay everybody and have money left over.

24 You have to rely on obscure, undetailed notes and  
25 assertions and assumptions to say maybe, maybe there won't be

1 money left over. But on the face of the balance sheet, there  
2 is enough money to pay everybody.

3 And if there's enough money to pay everybody, the leftover  
4 money is HMIT's. It's not -- it's not the professionals'.  
5 It's not the Claimant Trustee's. What's being used now is the  
6 residual -- old residual equity's money.

7 So Mr. Morris brought up mediation, and that was an  
8 interesting point, because in the papers, arguing about  
9 whether or not Your Honor should grant mediation, the estate  
10 and Mr. Seery made it very clear there would only be a  
11 resolution if there were complete and total releases given and  
12 all litigation stopped. So that was clear. We understood  
13 that. And what was at stake, obviously, in any mediation is  
14 what's left. So, what are the residual -- what's the  
15 residual?

16 But if we can't find out what the residual is and we can't  
17 find out what actually is being released, this estate can't  
18 ever end. It's not the Plaintiffs here who are keeping the  
19 engine going. It's the Defendants, because they know exactly  
20 how to push the buttons to raise suspicions about whether  
21 something untoward has gone on.

22 And so let me test the premise of the Defendants here with  
23 a hypothetical. Because, remember, Defendants arguments for  
24 dismissal turn on the contention that the Claimant Trust  
25 agreement prevents Plaintiffs from being considered

1 beneficiaries, no matter how much money the Claimant Trust has  
2 -- or squandered, for that matter -- if Mr. Seery doesn't  
3 authorize payment of Class 8 and 9 creditors in full and  
4 affirmatively certify that Classes 10 and 11 are  
5 beneficiaries. So, unless he does that, it's the Defendants'  
6 position Plaintiffs have no means of redress.

7       So let's test that with a hypothetical. Let's say that  
8 Mr. Seery, let's say that the Claimant Trustee, to keep  
9 earning his \$150,000 a month indefinitely, massively  
10 overspends professional fees to justify an objectively  
11 unreasonable indemnity reserve of \$125 million. And let's say  
12 he deliberately dribbles out payments to Class 8 and 9 so that  
13 eventually the combination of interest, administration, and  
14 professional fees is sufficient to eliminate the amounts that  
15 would otherwise be payable to the last dollar of 8 and 9, much  
16 less Classes 10 and 11.

17       And let's make the hypothetical even more extreme. What  
18 if Mr. Seery moved money into the Indemnity Subtrust and paid  
19 it to phantom vendors? I'm not saying he did that. I don't  
20 want stories about how we're accusing him of something. This  
21 is a hypothetical. But let's say he did that. He put it in  
22 the subtrust, paid it to phantom vendors, who kicked it back  
23 to him, in order to keep the amount low enough to pay the last  
24 dollar to Classes 8 and 9.

25       Under the Defendants' theory here, that can't ever be

1 discovered, much less remedied. And so that's why, that's why  
2 there is an equitable argument here, and a practical argument,  
3 Your Honor.

4 Because Your Honor has said you want this to end. This  
5 has to end. Well, the only way it can end is if there's  
6 sunshine, if there's enough disclosure and investigation so  
7 everybody can get comfortable that releases are appropriate  
8 and the money that could be left is left there, and then  
9 everybody can go home. Because we are all really tired of  
10 this. But it's the Defendants that are keeping it going.

11 THE COURT: Let me interrupt you. There are many  
12 jurisdictional arguments, as you all know. Many issues for  
13 this Court, legal issues here. But here are two things that  
14 stand out above all. And one is do the Plaintiffs have a  
15 contractual right to the information they seek or not. Why  
16 should the Court look beyond the Creditor Trust agreement, the  
17 plan, the confirmation order, which are final? These issues  
18 were never complained about. There's not enough transparency  
19 in the trust agreement language: No one ever made that  
20 argument. It's not on appeal.

21 So, again, many jurisdictional arguments here, but why  
22 should I ignore clear contractual terms here? It almost feels  
23 like modifying the plan three years down the road. So --

24 MS. DEITSCH-PEREZ: It's not --

25 THE COURT: So, --

1 MS. DEITSCH-PEREZ: I'll say it's not, Your Honor.  
2 It's not, Your Honor, because under Delaware law and under the  
3 good faith and fair dealing, every contract in Delaware --  
4 we're not in -- it's not a Texas contract -- in Delaware,  
5 there's a covenant of good faith and fair dealing. And when a  
6 party to a contract actually does things that prevent someone  
7 else from obtaining the benefits under the contract, then you  
8 don't read the contract literally, you read it to prevent the  
9 wrongdoer from getting the benefit of their wrongdoing. And  
10 that's --

11 THE COURT: Okay.

12 MS. DEITSCH-PEREZ: That's the reason Your Honor can  
13 and must allow this case to go forward. Because, otherwise,  
14 there is a terrible, terrible law that's being created. It  
15 enables somebody to --

16 THE COURT: Well, you say it's terrible law, but,  
17 again, the trust agreement was out there for consumption  
18 before the confirmation hearing. And your clients --

19 MS. DEITSCH-PEREZ: Well, --

20 THE COURT: -- or others could have come in and said,  
21 this just doesn't work, this lack of transparency, this lack  
22 of oversight, this lack of access to information. And you  
23 didn't.

24 MS. DEITSCH-PEREZ: Your Honor, who would have  
25 thought that the --

1 THE COURT: And not only that, but this is not -- I  
2 have no reason to believe this is atypical language. In the  
3 dozens if not hundreds of post-confirmation liquidating trust  
4 agreements I've seen, it looks like standard fare.

5 MS. DEITSCH-PEREZ: Your Honor, there is no -- no one  
6 could have contemplated at the time that we would be in the  
7 situation that we are now, with information not having been  
8 provided. Many Chapter 11s are much more cooperative.  
9 They're not liquidations. They're reorganizations. They're  
10 -- people are trying to end the estate, so they're sharing  
11 information. This is not a circumstance that could have been  
12 contemplated. And Your Honor can do something about it now.

13 THE COURT: Well, which brings me to my second sort  
14 of overarching issue that stands out, of all the different  
15 issues. And these are my own words more than anything I think  
16 I've read. It feels like what you're asking for, if there's a  
17 jurisdictional way to get there, if there's a legal way to get  
18 there, it feels like it would be a meaningless exercise,  
19 because the value in the trust is going down daily. It's  
20 going down hourly, as we speak. The value I could determine,  
21 if this goes to trial, would be completely meaningless a  
22 month, two months, five months, three years later, because of  
23 all the litiga...

24 MS. DEITSCH-PEREZ: Your Honor, but on that theory --

25 THE COURT: Please don't interrupt until I finish. I

1 want to make sure my point is clear. My law clerk --

2 MS. DEITSCH-PEREZ: Okay.

3 THE COURT: -- did bring in to me the list --

4 MS. DEITSCH-PEREZ: I understand.

5 THE COURT: -- the list of litigation. And even  
6 this, if we pulled up the right one, it's several months old,  
7 so even this is very dated.

8 But let me put it in very plain terms. It kind of feels  
9 like your client is its worst enemy in getting this relief,  
10 because your client, because of the fifty-something appeals  
11 and because of the motions for leave to bring litigation, is  
12 causing the value of this trust to plummet. And we're never  
13 -- it seems like a meaningless exercise. I'll never be able  
14 to make a declaratory judgment as your client wants me to, if  
15 I can get there legally and jurisdictionally. How could I get  
16 to a point of being able to value the trust and value the  
17 likelihood, determine the likelihood that your client is in  
18 the money when the legal fees are going up hourly because of  
19 all of these appeals?

20 I'm not saying your client isn't entitled to appeal, but  
21 I'm just saying he may be his own worst enemy. That strategy  
22 means he's probably never going to be in the money.

23 So these are my -- I just, I'm wanting you hopefully to  
24 focus on these two biggest overarching issues in my brain.

25 The trust agreement --

1 MS. DEITSCH-PEREZ: Okay.

2 THE COURT: -- says what it says.

3 MS. DEITSCH-PEREZ: And I can do that, Your Honor.

4 THE COURT: I'm supposed to respect contractual  
5 terms. So that's overarching issue number one in my mind.

6 But second, again, I don't know what the legal term would  
7 be for meaningless exercise, but it's just, it's almost like  
8 an impossibility thing to ever declare a value that means  
9 anything when it's going to be different two weeks from now,  
10 --

11 MS. DEITSCH-PEREZ: Your Honor, --

12 THE COURT: -- a month from now, a year from now.

13 MS. DEITSCH-PEREZ: Your Honor, it's not an  
14 impossibility. That, one, we would endeavor to do this really  
15 quickly and efficiently so that the cost of this is not  
16 material to what's in the estate.

17 But secondly, these kinds of exercises are done all the  
18 time in litigation. You estimate the future values. You --  
19 an expert can assist Your Honor in determining what is a  
20 reasonable indemnification reserve. These are things that can  
21 be done. This is what lawyers and judges do.

22 THE COURT: This is off the chart. This is not like  
23 any other situation I can think of. This is off the chart  
24 with the amount of post-confirmation litigation. I mean, if  
25 you can point me to something analogous out there, I'd love to

1 see it.

2 MS. DEITSCH-PEREZ: The fact that there isn't a case  
3 exactly like this doesn't change the fact that there are  
4 professionals who can look at this, can look at what has been  
5 spent so far, can look at whether hearings could have two or  
6 three lawyers instead of ten, and make an estimate of the  
7 amount that's appropriate for an indemnity reserve. That's  
8 something that's susceptible of proof and determination.

9 It's not impossible for Your Honor to decide that, and  
10 it's not fruitless. Someone can say, hey, wait a minute,  
11 every hearing you had, you know, ten people from Pachulski and  
12 ten people from Quinn, even though they're no longer really  
13 involved, and ten people from Willkie. And so if you can rein  
14 that in, the Court can say, this is what a reasonable  
15 indemnification would be and this is what's left. And so,  
16 yes, it will finally create a path for us to resolve this  
17 estate.

18 But without this information, we're left with suspicion  
19 and uncertainty. How do you resolve something when you don't  
20 even know what's left? We don't -- because the reporting is  
21 quarterly, we've heard rumors in the marketplace that Class 8  
22 has been paid in full. So I would ask Mr. Morris, is that  
23 correct? Has Class 8 already been paid in full? We don't  
24 know. I mean, can you tell us, what's the amount of the  
25 estate right now? We don't know. Because we don't know what

1 those notes mean. And Your Honor isn't -- and Your Honor  
2 doesn't know and can't know without shedding a light on this  
3 what that balance sheet really means.

4 And Mr. Morris makes a big deal about, oh, there are  
5 admissions in the complaint then they don't know if they're in  
6 the money. Your Honor, the complaint was filed before the  
7 balance sheet. So when in the last proceeding HMIT said it's  
8 in the money, that's because it knew from the balance sheet  
9 it's in the money. So you know now, you can look at that  
10 balance sheet and say on the face of it, okay, there is more  
11 -- there are more assets than liabilities. In order to  
12 determine that that wouldn't be the case, you'd need a lot  
13 more information about what those notes that you point to in  
14 the denial of reconsideration actually mean.

15 But here, the estate is trying to say no, not only do the  
16 Plaintiffs not get to know that information, we're not telling  
17 Your Honor, either. We're just putting a lid on it. And so  
18 we can all go on fighting because we don't have the  
19 disinfectant of information.

20 And so -- and now we'll get into more of the law. Your  
21 Honor asked, how can I do this? Delaware law requires this  
22 Court to afford standing to all beneficiaries, including  
23 contingent ones. And especially when it's alleged that vested  
24 status is being withheld in contravention of the duty of good  
25 faith and fair dealing.

1           So let's go to Slide 3.

2           Okay. Let's take a look at where we started and why, why  
3 we're so upset about this. If you look at the value of the  
4 estate as of June of '22, there was somewhere in the mid-\$600  
5 million in assets. And at the start, there was something  
6 under \$400 million in claims. And so now, as of the end of  
7 '23 -- go back a second, go back, Mike, one more -- as of the  
8 end of '23, there was about \$120 million of Class 8 and 9  
9 remaining. But remember, there was -- you know, if you  
10 subtract 400 from 650, you've got \$250 million. That's a  
11 pretty big cushion.

12           So let's go forward and look at what we know from the  
13 balance sheet. So, if we -- and we've put references there.  
14 But if we go through -- you can see from the face of the  
15 balance sheet there is a net value -- that's after everybody,  
16 8 and 9 have been paid off -- of \$122 million. So, in order  
17 to get rid of that, you have to assume the indemnification is  
18 going to eat up all of that.

19           Now, think about what the indemnification means. If in  
20 fact there was no wrongdoing, well, there'll be no judgment to  
21 indemnify.

22           THE COURT: But what about the --

23           MS. DEITSCH-PEREZ: If in fact --

24           THE COURT: What about the professional fees?

25           MS. DEITSCH-PEREZ: \$122 million, Your Honor?

1 THE COURT: Well, we're three years post-  
2 confirmation, with no end in sight to these appeals.

3 MS. DEITSCH-PEREZ: Your Honor, I think it defies  
4 belief that they could reasonably spend \$122 million. And the  
5 point is, if we can get this information and really have  
6 satisfaction that maybe there's really nothing bad that's  
7 happened and there are no -- there's no hidden money anywhere,  
8 and we know what's there, this can end. This can end.

9 THE COURT: Do you --

10 MS. DEITSCH-PEREZ: We can finally see the light at  
11 the end of the tunnel.

12 THE COURT: I mean, again, we're here for legal  
13 argument, but you're saying this could end. This is never  
14 going to end. This is never going to end. I stayed things in  
15 2023, at your client's request, to take another crack at  
16 mediation. Okay? Even though we did mediation, even though I  
17 stayed everything in 2020 before confirmation and ordered  
18 global mediation and things didn't work out, your clients and  
19 Mr. Dondero convinced me, two years post-confirmation, stay  
20 everything again, because we don't think we got attention or  
21 respect from the mediators. The Debtor was focused on other  
22 people, like UBS and the Redeemer Committee and Joshua Terry.

23 So I don't know what happened, and I don't want to know  
24 what happened. It's not my role to know what happened in the  
25 most recent mediation exercise. But I do know that it's

1 enough to convince me this will never end. When things were  
2 stayed --

3 MS. DEITSCH-PEREZ: And Your Honor, --

4 THE COURT: When things were stayed and the legal  
5 fees weren't -- well, they were probably continuing to accrue  
6 because there were still appeal deadlines out there right and  
7 left that had to be addressed. But it's not going to settle.  
8 It's going to go on forever whether you get this information  
9 or not.

10 MS. DEITSCH-PEREZ: Your Honor, I'm telling you, and  
11 I represent the Plaintiffs, that the only thing that can  
12 enable this to end is to have sufficient information to be  
13 able to say, okay, I know what this all means, I know what  
14 we'll get, I know what we're foregoing.

15 How can anything ever settle if you don't know what you're  
16 giving up and you don't know what you're getting? How would  
17 that be possible? How would that be fair to parties to say,  
18 you should settle but you don't know what you're giving up and  
19 you don't know what you're getting? We're trying to get to  
20 the point where we could end this.

21 Shall I go on, Your Honor?

22 THE COURT: Yes, please.

23 MS. DEITSCH-PEREZ: Okay. Mike, next slide.

24 Okay. This is just a quick summary of the Defendants'  
25 arguments. Mootness, collateral estoppel, advisory opinion,

1 standing, failure to state a claim, and unclean hands.

2 Let's go to the next.

3 Okay. So, ironically, the Defendants argue that the  
4 balance sheet filed on July 6th eliminates the controversy  
5 among the party, parties, mootng the claims. But that can't  
6 be true, and Defendants won't provide the information to fill  
7 out the notes on the balance sheet and when -- when the  
8 balance sheet on its face shows assets exceed liabilities but  
9 the Defendants continue to maintain that they don't but  
10 without any analysis of why that's so.

11 Let's go on to the next.

12 But the Defendants shouldn't be able to have it both ways.  
13 If the balance sheet and financial statements are insufficient  
14 to determine whether assets exceed liabilities, as they claim,  
15 then the claims can't be moot. And, of course, a claim can't  
16 be dismissed simply because a defendant says in a pleading  
17 that a particular document shows that plaintiffs lack standing  
18 when the document itself does no such thing.

19 On its face, the balance sheet shows assets exceed  
20 liabilities. But if there's any doubt or ambiguity, that  
21 means discovery is needed, not that claims should be  
22 dismissed. This is a fact issue on which Plaintiffs are  
23 entitled to discovery and trial.

24 The next slide.

25 So, I mean, in response to the mootness arguments,

1 Plaintiffs cite cases that -- uncontroversial cases that say,  
2 when there's still a controversy, that claims are not moot.  
3 And if you'll look at Defendants' reply, they don't address  
4 any of that.

5 The Defendants also rely on the Court's order denying  
6 reconsideration of the HMIT gatekeeper regarding insider  
7 trading to say that it either moots Count Three or is the  
8 basis to collaterally estop Plaintiffs from proceeding. And  
9 there are numerous reasons that that's wrong.

10 So, one, the Court's dicta -- and it was dicta, because  
11 the Court had a lot of other reasons that it disposed of the  
12 matter -- is based on information that the Defendants now  
13 refuse to stand behind. And the Court's order doesn't address  
14 whether HMIT is in the money now or when the complaint was  
15 filed or whether it will ever. And it certainly doesn't  
16 exclude the potential that Plaintiffs would certainly be in  
17 the money but for Claimant Trustee's alleged breaches of good  
18 faith and fair dealing. So there's nothing about the Court's  
19 original or reconsideration order that precludes standing  
20 here.

21 Moreover, the order is obviously one that's on appeal and  
22 may be overturned.

23 Next slide.

24 If we look more closely at the requirements of collateral  
25 estoppel, Defendants are ignoring the basic elements of the

1 doctrine. So, one, the question is, are the claims identical?  
2 And they're not, for the reasons that I mentioned. The issues  
3 were obviously not necessary to the reconsideration decision  
4 since the Court stated it had several grounds for its  
5 decision.

6 More importantly, the Court's decision was made on a  
7 summary record in a gatekeeper proceeding. The -- so there  
8 was no discovery on that issue. And the Defendants have never  
9 fully detailed to the Plaintiff or the Court what's in the  
10 Claimant Trust, what's in the Indemnity Subtrust. We don't  
11 know.

12 So the balance sheet is summary information. The notes  
13 are not explained. And no one, not the Plaintiffs, not the  
14 Court, has had an opportunity to test the data and assumptions  
15 there, including undisclosed contingent liabilities and \$198  
16 million in off-balance-sheet adjustments.

17 So let's go to the next slide.

18 So I just urge the Court to go back and look at the  
19 balance sheet. And we have a picture of it up here. But if  
20 you look at it, you'll see notes. For example, Note 3. Value  
21 reflected herein consists primarily of ownership in private  
22 funds and subsidiaries. What funds? What are their assets?  
23 How liquid? Have they been sold? For a loss or gain? What's  
24 the resulting change in cash balance?

25 There's another note for other liabilities. To whom are

1 they owed? Note 5. The amount of further incremental  
2 indemnification reserves are currently expected to exceed \$90  
3 million and may be greater. \$50 million? \$90 million? \$125  
4 million? What's the math? What's the math behind that and  
5 how much has been used? What's been put aside? Who is  
6 getting it?

7 It says \$35 million has been funded into the Indemnity  
8 Trust. What's the balance now? Did the additional funds  
9 reduce the value of the Claimant Trust? Did the money come  
10 out of current earnings, so maybe it hasn't reduced it?

11 Incremental springing contingent liabilities that range  
12 from \$5 to \$15 million. What are they? How much? When are  
13 they likely to crystallize?

14 These are among the questions that are unanswered from  
15 that balance sheet.

16 And let's go to Slide 12.

17 And so while -- Your Honor has pointed out many times that  
18 the August 25, 2023 opinion is very long, over a hundred  
19 pages, very detailed. And I concede: It is over a hundred  
20 pages. It is long. It has many sentences in it, and it has a  
21 lot of discussion. But there's no analysis about the value of  
22 the assets and liabilities or the net value of the Claimant  
23 Trust or what has been moved into the Indemnity Subtrust or  
24 why and was it justified. None of that is addressed.

25 The Court's October 6th opinion is short and it's cursory,

1 because it also doesn't analyze the value of the assets or  
2 liabilities or the net value of the Claimant Trust or what has  
3 been moved into the Indemnity Subtrust or why and whether it's  
4 justified. It simply states HMIT does not give proper  
5 attention to the voluminous supplemental notes in the balance  
6 sheet that were allegedly, this is a quote, "integral to  
7 understanding the numbers therein."

8 But what do those supplemental notes mean? The Debtor is  
9 vigorously shielding any scrutiny, while at the same time  
10 arguing that this Court's nonsubstantive reference to those  
11 notes collaterally estops Plaintiffs from bringing this  
12 action. But without access to information with which to  
13 challenge the other side, a party doesn't have a full and fair  
14 opportunity to be heard, and therefore any ruling based on  
15 that kind of proceeding can't have collateral estoppel effect.

16 Okay. So, again, this is just a summary. No full and  
17 fair opportunity prevents collateral estoppel, and the fact  
18 that there were numerous other grounds and a lack of reasoning  
19 to the issue that's being asserted here should serve  
20 collateral estoppel makes collateral estoppel inappropriate.

21 Okay. The Debtor also -- the Defendants argue that Count  
22 Three seeks an advisory opinion. It doesn't. It seeks a  
23 declaration concerning Plaintiffs' status that could be based  
24 on simple math from the face of the balance sheet that  
25 presently, presently there's enough money to pay everybody.

1 And so there would be a -- need to be a whole lot more  
2 explanation for the Defendants justifying why that's not the  
3 case.

4 So let's look at a hypothetical to see if Defendants'  
5 assertions about standing make sense. So let's say in a  
6 breach of contract case a broker fails to sell the plaintiff a  
7 million dollars' worth of shares that are at that time selling  
8 for a dollar each. Can the defendant move to dismiss, saying  
9 that plaintiff has no standing because the shares might go  
10 down in value, eliminating any damages? I'm sure Your Honor  
11 would say obviously not. But isn't that what the Defendants  
12 here are saying? It's -- they're saying it's possible they'll  
13 spend enough money to prevent the former equity from getting  
14 anything. But that doesn't mean that Plaintiffs lack standing  
15 now.

16 The Claimant Trust had sufficient assets to pay unsecured  
17 creditors in Class 8 and 9 in full, with interest, at least as  
18 early as mid-2023, maybe as early as September '22. Had Mr.  
19 Seery fulfilled his mandate, he should have distributed that  
20 and made the GUC certification. So Plaintiffs' contingent  
21 interests should have officially vested many months ago. And  
22 because of the duty of good faith and fair dealing, the Court  
23 --

24 THE COURT: What about Section 6.1 of the credit  
25 trust agreement?

1 MS. DEITSCH-PEREZ: You have to imply -- you have to  
2 add into that a duty of good faith and fair dealing. And so  
3 if Mr. -- if the Claimant Trustee has not taken those actions  
4 for the express purpose of making sure to silence -- trying to  
5 silence Class 10 and 11 and prevent them from getting money  
6 and being able to spend it all, you know, paying -- holding  
7 back enough to eventually pay a dollar -- a dollar less to  
8 Class 9, and using the rest of the money. So, Your Honor,  
9 because of the duty of good faith and fair dealing, 6.1 does  
10 not tie Your Honor's hands.

11 And let's look at the Slide 16.

12 THE COURT: The Trustee is required to reserve  
13 amounts necessary for indemnification obligations and the  
14 administration expenses of the trust are entitled to payment  
15 ahead of any classes under the plan. Class 8, Class 9, as  
16 well as --

17 MS. DEITSCH-PEREZ: Uh-huh.

18 THE COURT: -- 10, 11.

19 MS. DEITSCH-PEREZ: Your Honor, but is not -- is  
20 there not any limit on how much can be set aside? Let's say  
21 there were -- there was \$300 million left over.

22 THE COURT: This is where I go back --

23 MS. DEITSCH-PEREZ: Could a Claimant --

24 THE COURT: -- to your client is in control of its  
25 own destiny here. This --

1 MS. DEITSCH-PEREZ: Well, basically, is Your Honor  
2 saying --

3 THE COURT: This should all be over. This should all  
4 be over, three years post-confirmation. It should all be  
5 over.

6 MS. DEITSCH-PEREZ: Yes. And --

7 THE COURT: They stayed --

8 MS. DEITSCH-PEREZ: Yes. And if we --

9 THE COURT: They stayed the mega-lawsuit. They  
10 stayed the mega-lawsuit for the reasons you are suggesting.

11 MS. DEITSCH-PEREZ: The unjustified mega-lawsuit that  
12 shouldn't have been brought in the first place. They stayed  
13 it. Very nice. They stayed it because they didn't -- they  
14 knew they didn't need that money. They knew it was  
15 unjustified. So they stayed it.

16 THE COURT: So that would suggest to me proper  
17 exercise of business judgment, litigation judgment. But they  
18 have no control over all of these appeals and all of the --

19 MS. DEITSCH-PEREZ: But --

20 THE COURT: -- litigation that your clients pursue.

21 MS. DEITSCH-PEREZ: Your Honor, my clients pursue  
22 litigation because they don't have the information to know  
23 whether they're -- wrongdoing is occurring. And the hallmark  
24 of this bankruptcy --

25 THE COURT: That doesn't apply with regard to the

1 appeals. And, again, --

2 MS. DEITSCH-PEREZ: Yes. And the appeals --

3 THE COURT: -- if your client wants to appeal, that  
4 is what's beautiful about our system. You can appeal and  
5 maybe get judgments overturned. But --

6 MS. DEITSCH-PEREZ: That's right.

7 THE COURT: -- it's a strategy here. Right? As long  
8 as you keep doing that, --

9 MS. DEITSCH-PEREZ: No, it's --

10 THE COURT: As long as you keep doing that, HMIT and  
11 Dugaboy's contingent interests, any recovery on them is going  
12 to continue to become less and less likely.

13 MS. DEITSCH-PEREZ: But so Your Honor, is Your Honor  
14 actually suggesting that they should lie down and not  
15 challenge anything to save a buck, and so if things have  
16 happened --

17 THE COURT: No. You heard what I said. Appeal away.  
18 Appeal away. No trial judge, no bankruptcy judge gets things  
19 right a hundred percent of the time. So appeal away. But  
20 don't complain about maybe not being in the money, when the  
21 greatest risk, it sounds like, to your client not being in the  
22 money is the professional fees continuing to impair value.  
23 And we could never get to a point in time where we could --  
24 you know, again, my words earlier, meaningless exercise. How  
25 could I ever make a declaratory judgment about value or the

1 likelihood of your client recovering as long as there are  
2 dozens of appeals continuing to cause the liabilities to  
3 increase, the expenses to increase?

4 MS. DEITSCH-PEREZ: Your Honor, that's, I mean, --

5 THE COURT: You're asking the Court to do something  
6 impossible.

7 MS. DEITSCH-PEREZ: It's not impossible, because  
8 these appeals -- appeals like this happen all the time, and  
9 there are certainly professionals who are involved --

10 THE COURT: Name one bankruptcy case in history where  
11 there have been this many appeals.

12 MS. DEITSCH-PEREZ: It -- there don't -- there  
13 doesn't have to be another one with this many appeals. You  
14 just look at the cost of an appeal in any case and figure out  
15 whether, with what's going on here, what is the appropriate  
16 amount to set aside for that cost. It's eminently doable. It  
17 doesn't -- we don't have to have an exact case to match it to.  
18 We just need to have -- are there ever appeals of whether a  
19 release is overbroad? Sure. Are there ever appeals about  
20 whether a gatekeeper is appropriate? Sure. Are there ever  
21 appeals about whether the dismissal of a claim is appropriate?  
22 Sure. Those are all things that someone can look at and say,  
23 well, this is an appropriate amount to be spent on that, and  
24 so this is an appropriate amount to hold aside for resolving  
25 it.

1 But what we're saying is if we can get sufficient  
2 disclosure, we can figure out whether or not there -- it ought  
3 to be ended. But without that, we're left saying, what's  
4 being hidden here? What's actually left? What's been done?  
5 And so that's why -- and this is a problem that comes up in  
6 trusts all the time when there's not sufficient disclosure of  
7 what's in the trust. So that's why, under the *Restatement of*  
8 *Trusts*, --

9 THE COURT: Wait, wait, wait. This is what happens  
10 all the time? I don't know what kind of --

11 MS. DEITSCH-PEREZ: Yeah. In other words, that --

12 THE COURT: What post-confirmation trust agreement  
13 that's been approved as part of a plan does this happen all  
14 the time?

15 MS. DEITSCH-PEREZ: I'm not talking about -- about  
16 trusts in bankruptcies in particular. I'm talking about --

17 THE COURT: That's what we're dealing with here.

18 MS. DEITSCH-PEREZ: Well, --

19 THE COURT: And I'm just telling you: One time, I've  
20 wracked my brains, and one time since I've been on the bench  
21 -- I'm coming up on my 18-year anniversary.

22 MS. DEITSCH-PEREZ: Uh-huh.

23 THE COURT: I'm old. But one time I have had  
24 litigation about what the heck is going on with the post-  
25 confirmation creditor trust.

1 MS. DEITSCH-PEREZ: Uh-huh.

2 THE COURT: The facts were so very different. It was  
3 a creditor trust agreement, and I think it had a three-year  
4 term on it. The trust was going to be wrapped up in three  
5 years. And Year 3 came along and there was a motion to extend  
6 it. We're not done, we want to expand it, I don't know, six  
7 months, maybe a year. And then that time frame went by and  
8 there was another motion to extend it. So it was extended  
9 another year. And then it happened again.

10 And a creditor objected, saying, I want to know what the  
11 heck is going on. And I looked at the docket sheet and I'm  
12 like, gosh, there aren't any appeals out there, there's hardly  
13 any activity that's going on. And so we had a hearing. And  
14 the trustee was getting a flat fee that was rather large for  
15 the size of that estate, where unsecured creditors were  
16 probably going to get less than ten cents on the dollar. And  
17 we ended up having another hearing where we find out that the  
18 oversight committee hadn't met in like three years and these  
19 creditors who are likely to get five cents on the dollar, they  
20 had just mentally checked out a long time ago.

21 And even in that situation, I was struggling with my  
22 power, my jurisdiction, to put any equitable oversight  
23 mechanisms in place when the creditors had voted on this, when  
24 the creditors got to see the creditor trust agreement before  
25 the confirmation hearing and no one complained. And luckily,

1 that situation was resolved. The creditor trustee said, we're  
2 going to wrap it up in six months. I'm no longer going to  
3 take my compensation. And it was some tax issue that no one  
4 had been focusing on properly, like I think maybe the company  
5 hadn't done tax returns in a gazillion years before  
6 confirmation.

7 But the point I'm getting at is, again, many, many legal  
8 issues out there, but the overarching issue I keep coming back  
9 to is there's a creditor trust agreement that everyone got  
10 notice of and the Court approved. And contractual terms are  
11 something I'm supposed to respect. And you're asking me, on  
12 an equitable basis, to overrule this. This has maybe far-  
13 reaching effects for everyone who strikes a bargain in Chapter  
14 11 with, Here's our plan, here's what the liquidating trust is  
15 going to be governed by, here's the hearing, speak now or  
16 forever hold your peace, I approve it. And --

17 MS. DEITSCH-PEREZ: You're right, Your Honor, that it  
18 has far-reaching effects. And if you don't do something to  
19 shine a light on this and enable the disclosure and the  
20 hearing, you will embolden claimant trustees to do exactly  
21 what's happening here, maybe in even worse circumstances. And  
22 the difference between the case you mention and the case here  
23 is -- actually weighs in favor of intercession sooner here  
24 because there is so much money involved.

25 So there's -- it's not a piddling amount that, you know,

1 where creditors are only getting a couple cents on the dollar  
2 anyway, so, you know, they're going to get three cents or two  
3 cents. It's of less magnitude. Here, there is an enormous  
4 amount of money that may be squandered. And so it's more  
5 important to look hard at this and impose the covenant of good  
6 faith and fair dealing.

7 And that's why the *Restatement of Trusts* says that  
8 beneficiaries of a trust are -- include contingent  
9 beneficiaries. And then if you take --

10 Let's go to the next slide, Mike.

11 Okay. Delaware courts also look to *Black's Law*  
12 *Dictionary*. And that's important here, because it actually  
13 includes contingent beneficiaries and direct beneficiaries  
14 within the definition, without any qualification, but  
15 expressly distinguishes an incidental beneficiary or someone  
16 who's going to be a beneficiary by virtue of a separate  
17 contract. And nothing in the Claimant Trust agreement  
18 indicates that Plaintiffs are merely incidental beneficiaries.  
19 And that's important because in that *Paul* case that Defendants  
20 rely on so heavily, they were incidental beneficiaries. It  
21 was a separate document, not the trust agreement itself, that  
22 would give rise to the status of the plaintiffs.

23 And so Delaware -- go to 18 -- Delaware courts make a  
24 point of not -- of not reading statutory language  
25 restrictively to exclude classes of beneficiaries. And so

1 while they are not absolutely on point, they are thematically  
2 on point, and to say that if someone is even a contingent  
3 beneficiary, they ought to have the rights that one has under  
4 the Delaware law.

5 And so -- go to -- move -- next slide.

6 And the duty of good faith and fair dealing is not  
7 disclaimed in the Claimant Trust agreement, and moreover, it  
8 cannot be disclaimed. So that's something Your Honor has to  
9 take into account. And the impact of a duty of good faith and  
10 fair dealing is that a party is basically estopped from  
11 raising a provision that they are using in conjunction with  
12 their own wrongdoing.

13 So if the Claimant Trustee is deliberately not paying out  
14 \$8 million in full in order to keep an unreasonable amount in  
15 reserve and be able to be employed at \$150,000 a month, you  
16 know, being paid the same thing now, when most of the  
17 liquidation has already been done, as, you know, when there  
18 were a million things going on and a lot of management. So it  
19 does seem unreasonable, and the Claimant Trustee has the power  
20 to keep that going basically forever.

21 Next slide.

22 And so -- and when I said earlier, you know, this is a  
23 common thing, what I meant was cases like *Estate of Cornell*  
24 and *Edwards*. It's just a -- it's a universal problem that you  
25 can prevent or postpone vesting unreasonably and prevent

1 distribution by your own acts.

2 And if you look at the Defendants' reply, there is not one  
3 word about these concepts, about whether or not the Court has  
4 the power and, really, must stop a trustee from raising their  
5 own interest over the interests of the beneficiaries,  
6 including the contingent beneficiaries.

7 Next slide.

8 So, and I really covered this to some degree, but  
9 Defendants' reliance on *Paul Capital*, which is an unpublished  
10 case, is misplaced. The interests here are not incidental.  
11 They're not derived from an outside contract. The court in  
12 *Paul Capital* also relied on the fact that the trust agreement  
13 -- agreements in that case were fully integrated, which was a  
14 reason they didn't look to that outside contract. But in  
15 fact, there's no merger clause in the CTA, so that's another  
16 difference.

17 Next.

18 Defendants' entire argument that Plaintiffs are not  
19 entitled to an accounting turns on its erroneous conclusion  
20 that Plaintiffs are not beneficiaries under the CTA. And now  
21 they also point to -- which I don't believe they did in their  
22 papers -- they also point to the general rule that an  
23 accounting is not done as a matter of course. But this Court  
24 has the power under Texas law to impose an accounting when  
25 there are questions, as there are here, that need to be

1 answered in order for the parties to make sensible decisions  
2 about what ought to be done going forward.

3 Then, unclean hands, it's a one-sentence argument in the  
4 Defendants' brief referring to the Kirschner litigation, which  
5 it doesn't actually identify by name and doesn't say anything  
6 about the fact that it was voluntarily stayed. And the claim  
7 against HMIT, and it is breach of contract, so it's really  
8 hard to understand how being a defendant in a breach of  
9 contract action is unclean hands. And the Plaintiffs made  
10 these points in response to Defendants' motion, and  
11 Defendants' reply brief is conspicuously silent of any  
12 rebuttal.

13 Okay. So, Defendants' motion to dismiss needs to be  
14 denied so that Plaintiffs finally have a full and fair  
15 opportunity to challenge Defendants' assertion.

16 Even if this Court disdains Plaintiffs and sympathizes  
17 with the Claimant Trustee, the Court is making law here. And  
18 as we've pointed out, the law would create this platform for  
19 claimant trustees to enshrine themselves and to do things  
20 under a veil of secrecy. And that's not something that I  
21 would think this Court would want to do.

22 If there's enough money to pay all of Classes 8 and 9, the  
23 remainder belongs to Classes 10 and 11, not the estate  
24 professionals. Money left over after --

25 THE COURT: Let me ask you.

1 MS. DEITSCH-PEREZ: -- Class 8 and 9 are paid --

2 THE COURT: Again, that's just not entirely correct,  
3 because of 6.1. It is in there that indemnification  
4 obligations must be reserved for. And let me ask you: How  
5 many times have your clients tried to sue Mr. Seery?

6 MS. DEITSCH-PEREZ: I -- a couple. And the point is  
7 if he --

8 THE COURT: Only a couple?

9 MS. DEITSCH-PEREZ: Yes.

10 THE COURT: Only a couple? So, --

11 MS. DEITSCH-PEREZ: Yes. But --

12 THE COURT: So they're required to reserve amounts  
13 necessary. How much is your client or your clients seeking to  
14 recover from Mr. Seery in those couple of lawsuits? I think  
15 there have been more than two attempts.

16 MS. DEITSCH-PEREZ: I don't think it's -- I don't  
17 think the -- I don't think the amounts sought are the issue.  
18 It's -- it's there's -- and I'm not counsel of record in the  
19 insider trading case, but I don't remember a large amount.  
20 The -- in the case we're bringing to --

21 THE COURT: The insider trading case? The insider  
22 trading case? Are you talking about the Stonehill/Farallon  
23 thing?

24 MS. DEITSCH-PEREZ: Yeah. Yes. I don't -- that --  
25 you asked about every case where Mr. Seery is mentioned. So I

1 don't think there's a big number there. And the case --

2 THE COURT: Wait, wait, wait.

3 MS. DEITSCH-PEREZ: -- that I have --

4 THE COURT: You don't think there is a big number  
5 there? You don't remember the prayer for relief in that?

6 MS. DEITSCH-PEREZ: I don't, Your Honor. It's not --  
7 I'm not the lawyer of record in the case.

8 THE COURT: Okay.

9 MS. DEITSCH-PEREZ: But let me point out, if --

10 THE COURT: I think it was rather open-ended and  
11 large. Okay? But, and then there's the professional fees and  
12 expenses that have priority.

13 MS. DEITSCH-PEREZ: Your Honor, --

14 THE COURT: I mean, I just, I want to hear: Are you  
15 asking me to disregard Section 6.1 on equitable grounds? I  
16 think at bottom you are, and I just want to hear you answer  
17 that question.

18 MS. DEITSCH-PEREZ: Your Honor, I'm going to answer  
19 that question, but I'm also going to point out that the  
20 indemnification, if in fact there is intentional wrongdoing  
21 that occurred, the estate is not obligated to indemnify. If  
22 in fact the Claimant Trustee prevails in a claim or Mr. Seery  
23 prevails in a claim, there is no judgment to indemnify. So  
24 we're only talking about professional fees.

25 And yes, Your Honor, you don't ignore 6.1. You read it

1 with a duty of good faith and fair dealing applied in it, and  
2 that enables you to allow this case to proceed, which is  
3 necessary if we are ever going to end this matter.

4 And I will tell you, you asked about what's being sought  
5 from Mr. Seery.

6 THE COURT: Can someone on your team -- can someone  
7 on your team tell me how many pending appeals there are right  
8 now? Because the chart that I asked my law clerk to pull is  
9 several months old.

10 MS. DEITSCH-PEREZ: We can -- I'm -- we can submit it  
11 after the fact, Your Honor.

12 THE COURT: Okay. I wanted to know right now, but --

13 MS. DEITSCH-PEREZ: We'll send something.

14 THE COURT: I wanted to know right now, when I'm --

15 MS. DEITSCH-PEREZ: I mean, I don't know right now  
16 how many there are.

17 THE COURT: Is -- are there a dozen?

18 MS. DEITSCH-PEREZ: And I wouldn't want to try and  
19 count while I'm sitting here.

20 THE COURT: Are there a dozen? Can you say, are  
21 there more than a dozen?

22 MS. DEITSCH-PEREZ: I don't know, Your Honor. I  
23 think many of them have wound down, and so the only -- we're  
24 awaiting decision. So I don't know.

25 But appeals, of their nature, are generally not that

1 expensive. There's no discovery. You write a brief. You go  
2 and argue it.

3 THE COURT: That is not my recollection whatsoever  
4 from reviewing fee apps for 18 years or for practicing law 17  
5 years. You know. If --

6 MS. DEITSCH-PEREZ: Your Honor, I agree, if there  
7 were not -- if the Defendants didn't bring six or seven people  
8 to New Orleans or Houston when there is an appeal, I would  
9 think that it would cost less. There's no reason, in this day  
10 and age, where you can -- if you're only listening, you can --  
11 you can do that from your office, because the Court provides  
12 an audio link. There's no reason to have that many people  
13 travel clear across the country to go sit and listen to  
14 arguments. So, is there a reason things cost more than they  
15 should? Absolutely. But that's not the Plaintiffs.

16 THE COURT: Okay.

17 MS. DEITSCH-PEREZ: This Court could look at what is  
18 left and say, you know what, in my experience, taking into  
19 account your 18 years, this is -- this is what this many  
20 proceedings should cost. That's the amount of -- and even if  
21 you add a little cushion -- that's the appropriate amount of  
22 indemnity, and everything else can be distributed. You can do  
23 that, Your Honor. You have the -- there are professionals who  
24 could give expert testimony, and with that, between that and  
25 Your Honor's experience, you can figure that out. It's not a

1 black box.

2 THE COURT: All right. Mr. Morris, your rebuttal,  
3 please.

4 MR. MORRIS: Thank you, Your Honor.

5 If nothing else, counsel's presentation proved one thing,  
6 and that is this proceeding should be dismissed. She insists  
7 -- she had her presentation up on the board -- that they're in  
8 the money. We disagree. We disagree both with the analysis  
9 and with its legal significance.

10 But just as HMIT contended last summer that they were in  
11 the money, counsel today is ratifying that and saying they're  
12 in the money. If they're in the money, why do they need this  
13 information? They don't.

14 Let me just start with the rebuttal, because it's going to  
15 be some random points just because I'm -- I've taken some  
16 notes.

17 The concept that three-plus years ago Heller Draper,  
18 Munsch Hardt, Bonds Ellis couldn't foresee that we would be  
19 here is mind-boggling, and, then, legally irrelevant. You  
20 know who had the foresight to see that we might be here? The  
21 Creditors' Committee. They're actually the ones who drove  
22 this process on the Claimant Trust agreement. It's why the  
23 agreement says exactly what it says. It's an agreement  
24 between parties that defines the beneficial owners' rights and  
25 the limitations on those rights.

1           There is a reason that contingent trust beneficiaries are  
2 not owed any duty whatsoever until their claims vest and that  
3 they have no rights under the Claimant Trust agreement or the  
4 plan, at least as it pertains to the Claimant Trust agreement,  
5 until their rights vest. The vesting process was not an  
6 accident. It was intended to make sure that Mr. Dondero could  
7 not do exactly what counsel is making plain she wants to do  
8 today, and that is get information in order to second-guess  
9 every decision that Mr. Seery has made. Okay?

10           Everybody on our side of the table knew, based on Mr.  
11 Dondero's very long history of litigation, that this was a  
12 possible end result, and they prepared for it. That Mr.  
13 Dondero's lawyers did not is on them. The Court should not be  
14 rewriting the agreement today.

15           Ms. Deitsch-Perez contends that somehow we have obscured  
16 resources. No such thing has ever occurred. Okay? The plan  
17 and the Claimant Trust agreement provide very specific rules  
18 on what must be disclosed. There are other rules that require  
19 disclosures. There is no allegation whatsoever that the  
20 Claimant Trustee or the Claimant Trust has failed to meet its  
21 obligations to make the disclosures required under the  
22 Claimant Trust agreement and under the law.

23           And in fact -- this is another point that just gets  
24 obscured in all of this, like a suggestion that somehow Mr.  
25 Seery is some rogue guy doing stuff all by himself. That's

1 false. It's baseless. There is a Claimant Oversight Board  
2 with an independent member and with two members who have a  
3 substantial stake in the Claimant Trust. And there are many  
4 Claimant Trust beneficiaries, not one of whom is here to  
5 complain, not one of whom is concerned about the lack of  
6 disclosure, not one of whom is concerned about the reserves  
7 that have been made in this case.

8 There's really nothing more to talk about, but I have to  
9 respond to certain of the other points. This notion that  
10 somehow assets that exceed liabilities are the property of  
11 HMIT is legally incorrect. That's as polite as I can say it.  
12 Your Honor focused on it. 6.1. It is what it is. But I do  
13 need to make the point that there is no way that anybody could  
14 make a reasonable estimate of indemnification claims. It's  
15 not just appeals, Your Honor. That's one aspect, and I  
16 appreciate Your Honor focusing on it. But we have litigation  
17 in Guernsey. We have litigation in the Southern District of  
18 New York. We have, you know, these suits. He doesn't want --  
19 he is just looking for information.

20 He tried to sue my firm on this ridiculous theory that we  
21 were actually his lawyer way back in September 2019. Like,  
22 really? It was withdrawn in the face of a Rule 11 motion.  
23 But you know what? My firm incurred expenses defending  
24 itself.

25 These things don't stop. There is another lawsuit to

1 remove Mr. Seery. That's been stayed pending the outcome  
2 here, because just like they have no legal right or equitable  
3 claim to obtain any information from the trust, they have no  
4 legal right or equitable claim to remove Mr. Seery. But we're  
5 going to have to do that.

6 The money in the trust is not HMIT's. They have no legal  
7 or equitable claim to that money unless and until all senior  
8 claims and expenses are satisfied. And that will not happen  
9 as long as there's pending litigation.

10 You know, you're encouraged to make an estimate. What  
11 happens if your estimate is wrong, Your Honor? What happens  
12 if you come up with a ruling and say the estimate is \$50  
13 million and that's what Mr. Seery reserves, because he's going  
14 to comply with any order this Court issues, and at the end of  
15 \$50 million there's still litigation and he or other  
16 indemnified parties have been sued? And now what? Now what  
17 happens then?

18 That's why this is completely untenable and it has no  
19 basis in law, fact, or equity.

20 Dicta? Your Honor's decision that HMIT was not in the  
21 money was dicta? That was the whole basis for the motion.  
22 The motion sought reconsideration on the basis that they were  
23 in the money and therefore had standing. It's not dicta.  
24 It's the holding, after an analysis of the balance sheet,  
25 after showing the faulty logic in HMIT's presentation. That

1 it's a balance sheet, Your Honor. It's not cash. You don't  
2 spend what's on a balance sheet, you can't buy anything with  
3 what's on the balance sheet, because what's on the balance  
4 sheet is a bunch of contingent stuff. Like the Notes  
5 Litigation. \$70 million. They're here telling you they're in  
6 the money, and they treat that \$70 million as being in the  
7 Claimant Trust's pocket. It's not. Not only is it not in the  
8 Claimant Trust's pocket, Mr. Dondero is doing everything he  
9 can to make sure it never gets in the Claimant Trust's pocket.

10 This is their disingenuous theory of what the balance  
11 sheet means.

12 Again, apologies for the somewhat disparate nature of the  
13 rebuttal.

14 Duty of good faith and fair dealing. You've heard that a  
15 lot. Where is it in the complaint? What cause of action here  
16 is dependent on duty of good faith and fair dealing? Nothing.  
17 You won't find it. The words aren't there. This is a request  
18 for information and two requests for declaratory judgment that  
19 assets exceed liabilities and that they may vest someday in  
20 the future. Their complaint, the only thing that's the  
21 subject of this motion, has nothing to do with the duty of  
22 good faith and fair dealing.

23 The Kirschner action. It was stayed. But you know what,  
24 Your Honor? It wasn't dismissed. It was stayed because  
25 responsible parties like Mr. Kirschner and Mr. Seery said,

1 let's pause and see what happens. There may come a time when  
2 we start that litigation. There may come a time. Right? It  
3 wasn't dismissed.

4 So the notion that we've made a decision that it's not  
5 necessary is wrong. The decision was made that we don't have  
6 to spend that money today. Let's keep it on ice and let's see  
7 if we need to in the future.

8 Willkie. We heard some disparaging remarks about  
9 Willkie's participation in these proceedings. Well, you know  
10 what, Your Honor? Mr. Seery, God bless him, never retained  
11 personal counsel in this case until HMIT sought leave to sue  
12 him. Willkie is in this case only because Mr. Dondero made  
13 the decision to go after Mr. Seery. Mr. Seery is entitled to  
14 indemnification, he has indemnification, and I'm delighted  
15 that the Willkie firm is by my side.

16 If Mr. Seery -- if Mr. Dondero has regrets about Willkie's  
17 participation, he shouldn't sue Mr. Seery anymore. Maybe they  
18 wouldn't have such a role.

19 Listen to what they're saying, Your Honor. Listen to Ms.  
20 Deitsch-Perez's hypotheticals. What if they find out that  
21 there's overpayments to professionals? What if there's  
22 payments to phantom vendors? What if they learn someday that  
23 Mr. Dondero -- Mr. Seery has engaged in wrongdoing? If this  
24 is what they want to hold out for, if this is what they want  
25 to continue to litigate for, because they think one day maybe

1 they might have something, somebody did something wrong, it's  
2 Mr. Dondero's prerogative. But this is not a vehicle to give  
3 him information to pursue those claims. It's just not.

4 Standing. There's no standing motion here. We're not  
5 saying dismiss this because they don't have standing to spring  
6 the claims. We're saying that they don't have any legal right  
7 to seek information because of the plain terms of the Claimant  
8 Trust agreement and the plan. It's not a standing question,  
9 it's about whether they have a legal right, and the plain  
10 terms of the operative documents state definitively that they  
11 do not.

12 They can't settle without the information.

13 (Pause.)

14 THE COURT: Whoops. We just lost you, Mr. Morris.  
15 We just lost your sound.

16 MR. MORRIS: Okay. Am I back?

17 THE COURT: You're back.

18 MR. MORRIS: Okay. People settle claims, known and  
19 unknown, all the time. Okay? Mr. Dondero should look at his  
20 success rate in litigation in this case and decide what he's  
21 really holding out for. He should look at the success in  
22 bringing the suit against my firm. He should look at what  
23 happened when we had the evidentiary hearing in Hunter  
24 Mountain and it was revealed that he was actually the party  
25 who engaged in inside information. He was actually the person

1 who lied to Mr. Seery about what was happening with MGM. He  
2 should think about his lack of success, the lack of merit,  
3 what happened in the Notes Litigation, how ridiculous the  
4 supposed oral agreement defense was. He should ask Mr.  
5 Rukavina how the hearing went in front of Judge Scholer last  
6 week on the appeal.

7 And he's holding out for more claims? This is what he  
8 wants to do for his life? God bless him. We will reserve  
9 everything.

10 Mr. Dondero is not the principal. He doesn't get some  
11 final say over the propriety of the actions of the Claimant  
12 Trustee or my firm. He doesn't have that right. That's what  
13 the Claimant Trust agreement was intended to do. It reflects  
14 the settlor's intent. And the settlor's intent was that Mr.  
15 Dondero or Hunter Mountain or Dugaboy would get a check at the  
16 end of the day if and when all senior claims and expenses were  
17 paid and satisfied. That has not happened, so they don't get  
18 a check. It's really that simple. It may be hard for him to  
19 take, and I appreciate that, but he should have thought about  
20 these issues three-plus years ago when all of this was  
21 proposed, because other people thought about it, and here we  
22 are.

23 And the Court has, I respectfully say, no authority, no  
24 jurisdiction to override the plain terms of an agreement that  
25 has been affirmed by this Court and has been affirmed by the

1 Fifth Circuit Court of Appeals. There has never been a  
2 challenge to these provisions that they just want you to  
3 completely ignore.

4 Just one moment, Your Honor.

5 (Pause.)

6 MR. MORRIS: Your Honor, I actually have nothing  
7 further unless the Court has any questions.

8 THE COURT: Okay. I only have one question. And let  
9 me preface it by saying that I don't pay much attention to  
10 appeals and satellite litigation unless something is brought  
11 to me. I mean, there just are not enough hours in the day for  
12 me. Plus it's just, it's not of my concern. Right? An  
13 appellate court is going to do what it's going to do and issue  
14 a mandate to me at some point, if appropriate. And the same  
15 with satellite litigation. It's either going to somehow be  
16 brought before me or not.

17 So you may think that I'm aware, lawyers, parties may  
18 think that I'm aware at all times of different things going on  
19 out there, but I'm really only sort of aware. I don't know  
20 how many pending appeals there are right now. But I do know  
21 that someone who seemed to know what he was talking about,  
22 another judge in Texas, not here, told me that Highland has  
23 spawned more appeals at the Fifth Circuit than any other -- I  
24 don't know if he said bankruptcy case in history or Chapter  
25 11. And he said, are you proud of that? Hahaha. And I said

1 no. I'm not even remotely proud of that. And I haven't  
2 double-checked his figures, but he's kind of a numbers wonky  
3 lovable geek, so I think he probably knew what he was talking  
4 about.

5 But finally getting to my question, Mr. Morris: You  
6 alluded to there's a vexatious litigant motion pending, and  
7 you reminded me I heard about that at a hearing many months  
8 ago. I think you said it was before Judge Brantley Starr, a  
9 district judge here in this district. Is that correct?

10 MR. MORRIS: It is correct, Your Honor. And we filed  
11 our reply papers last Friday, so it's been fully briefed.

12 THE COURT: Okay. Well, even though I don't closely  
13 monitor appeals, satellite litigation, I may be monitoring  
14 that.

15 MS. DEITSCH-PEREZ: Your Honor, may I make one  
16 rebuttal, by the way, to Mr. Morris's presentation? I just  
17 have one comment.

18 THE COURT: If it's 30 seconds. But this is out of  
19 order. Usually, Movant goes last. I assume this is going to  
20 be hugely important.

21 MS. DEITSCH-PEREZ: It is important. It's something  
22 Your Honor raised and Mr. Morris raised, so I want to point  
23 something out so there is no misunderstanding. There was a  
24 lot of talk about, well, the Plaintiff should have done  
25 something about this at the time of the plan. If Your Honor

1 recalls, at the time of the plan the projections were that  
2 Classes 8 and 9 would recover a fraction of their value. So  
3 there was no reason Classes 10 and 11 should be -- should have  
4 anticipated the issues that have arisen now. And I just want  
5 to remind everybody of that.

6 MR. MORRIS: And just one sentence, Your Honor. Mr.  
7 Dondero acquired every single asset that Highland has. He was  
8 in Highland's offices with full access to all information  
9 through October. He had Mr. Waterhouse, the CFO, onsite until  
10 just before the confirmation hearing, and there was no  
11 objection to those projections.

12 What happened is Mr. Seery and his team did a great job  
13 and benefited from a rising market, and yet here we're going  
14 to be subjected to more litigation. It's brilliant.

15 THE COURT: All right. Well, I am finished hearing  
16 everything. And with respect to that comment for the  
17 Plaintiffs, I continue to think this is a very important  
18 issue, of the many issues, of the many jurisdictional issues  
19 here. And there are so many issues, I'm not sure, if you  
20 prioritize the issues, where this one falls on the list. And  
21 yet as a bankruptcy judge I am obsessed a bit with the issue  
22 of the impact on the Chapter 11 world.

23 We have liquidating Chapter 11s with -- or even if they're  
24 not liquidating, we have Chapter 11s where there's a  
25 litigation trust like this one where there is sometimes a

1 discussion, when are you going to get the creditor trust  
2 agreement on file? Oh, it's going to be part of a plan  
3 supplement, and the plan supplement will be filed, you know,  
4 ten days before the confirmation hearing. Whatever. I'm just  
5 giving you a typical fact pattern. And it's part of the  
6 evidence. It's part of the information. It's not just  
7 evidence at the confirmation hearing. It's usually on file  
8 several days before the confirmation hearing, where it's out  
9 there for consumption, for people to complain about if they  
10 think there are objectionable terms. And we just have this in  
11 dozens and dozens of cases.

12 And I can even go further back in my brain here. I mean,  
13 Chapter 11, very soon after the case was filed, we had a U.S.  
14 Trustee saying conversion to Chapter 7 or appointment of a  
15 Chapter 11 trustee. You know, we can't have Mr. Dondero as  
16 the manager of this Debtor anymore. And despite that  
17 argument, we put in place a corporate governance mechanism  
18 that Mr. Dondero agreed to. And my point is there's always  
19 been a huge amount of oversight by what we considered the  
20 fulcrum security here, the unsecured creditors. A huge amount  
21 of oversight. A huge amount of oversight in this case that  
22 was negotiated in response to a very active Creditors'  
23 Committee and a U.S. Trustee saying can't have a debtor-in-  
24 possession here.

25 So why do I go back? I mean, it's really troublesome for

1 any judge to hear, We have suspicion. We are worried about a  
2 breach of good faith and fair dealing. What if there are  
3 fictional vendors?

4 I mean, this case has been full of extensive oversight.  
5 And not only could the Plaintiffs here have complained about  
6 the terms of the creditor trust agreement, heck, they could  
7 have said convert this sucker to Chapter 7, because a Chapter  
8 7 trustee will have -- there will be a lot of transparency for  
9 everything that happens in winding down this estate.

10 So, rambling, yes, I'm rambling. I do that. But the  
11 philosophical issue here, I just, it's hard for me to ignore,  
12 because, looming, we have the jurisdictional issues, but what  
13 you're asking me to do is something that it's just a fact  
14 pattern we see all the time of plans with litigation trust  
15 agreements. And we all know what the terms are going to be,  
16 and we can all argue about those terms if we don't think  
17 they're appropriate, and we all know that the future is  
18 uncertain and things could change, and that's just the way it  
19 is. Here it is. Live with it or not.

20 Anyway, but so that's a big deal, the contractual rights  
21 here.

22 And as I said earlier, another kind of overarching issue  
23 is it feels like kind of a meaningless exercise when we have  
24 the asset side of the balance sheet but the liabilities just  
25 grow unlike any other case. It's fair to say unlike any case.

1 There have been more appeals generated at the Fifth Circuit  
2 from this case than any Chapter 11 ever, and maybe any  
3 bankruptcy ever.

4 There was a reference to, well, yeah, there are lots of  
5 appeals, but you don't need to send six lawyers to New Orleans  
6 or have people. But I was just writing down as I was thinking  
7 through this, and Mr. Morris alluded to some of it, we've had  
8 at least the following law firms involved for either Mr.  
9 Dondero or entities he controls: Munsch Hardt; Bonds Ellis;  
10 Heller Draper; Louis Phillips' firm, I think that's Kelly  
11 Hart; the Stinson law firm; Sawnie McEntire's law firm; Ms.  
12 Ruhland, Amy Ruhland; Lang Winshew; and I forget the name of  
13 the lawyers who represented the Charitable Trusts.

14 MR. MORRIS: Mazin Sbaiti.

15 THE COURT: The Sbaiti law firm.

16 So I've just rattled off from memory nine law firms, okay?  
17 I'm not even sure I've captured them all. Probably not. So  
18 it's, on all sides of this, I can't remember if I've said this  
19 in court or I've just maybe said it back in chambers, but I'll  
20 say it: This feels like the Disneyland case. Have I ever  
21 said that in court yet? Do you know what I mean by that? I  
22 probably haven't.

23 The famous quote of Walt Disney, when someone asked him  
24 about the theme park and when it would be finished, and he  
25 said, Disneyland will never be finished as long as there are

1 creative people with imaginations. I mean, this is like the  
2 Disneyland case. It will never be finished as long as there  
3 are certain parties and lawyers who have imagination and keep  
4 filing stuff. I don't mean to be flippant, but I really am  
5 trying to emphasize what I said. Sure, people are entitled to  
6 appeal, but how can you complain about 'I don't know if I'm in  
7 the money or not' when there's just no end in sight?

8 So I'm going to obviously take this under advisement, and  
9 we will carefully look at every argument and every case,  
10 because that's what we do. That's what we're duty-bound to  
11 do. We don't knee-jerk anything around here. But I am very,  
12 very troubled by some of the arguments. And it's what made me  
13 ask about the vexatious litigant motion and its status,  
14 because it just feels so beyond the pale to make accusations  
15 of some sort of breach of good faith and fair dealing and  
16 raise the specter of lack of transparency and something  
17 untoward may be going on, when these were the terms negotiated  
18 as far as post-confirmation oversight, we have an Oversight  
19 Committee, and I think every rational person knows that the  
20 professional fees and the indemnification obligations and the  
21 appeals and the satellite litigation are why we can't wrap  
22 this up. Okay?

23 So let that soak in. And we will get an opinion out as  
24 soon as we can make it happen.

25 All right. We're adjourned.

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THE CLERK: All rise.  
(Proceedings concluded at 11:28 a.m.)

--oOo--

CERTIFICATE

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

**/s/ Kathy Rehling**

**02/20/2024**

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024

**Volume 11**

**APPELLANT RECORD**



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

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

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

*v011* **II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

- 000001*
1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

000042 2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].

000078 3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].

000114 4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.

000121 5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 3**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 4**

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

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**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 5**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 6**

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

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL – Page 7**

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

**APPELLANTS' STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL - Page 8**

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

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>Vol. 11</i> 04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
<i>002838</i> 01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
<i>002900</i> 06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript
<i>002983</i>			

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

DATE	CASE NO.	DKT. NO.	DESCRIPTION
<i>003031</i> 05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

/s/Deborah Deitsch-Perez

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

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

3 In Re: ) **Case No. 19-34054-sgj-11**  
4 ) Chapter 11  
5 )  
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HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Reorganized Debtor.

Dallas, Texas  
April 24, 2023  
1:30 p.m. Docket

- DUGABOY INVESTMENT TRUST AND HUNTER MOUNTAIN INVESTMENT TRUST'S MOTION FOR LEAVE TO FILE PROCEEDING (3662)  
- STATUS CONFERENCE RE: MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY PROCEEDING FILED BY CREDITOR HUNTER MOUNTAIN INVESTMENT TRUST (3699)

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

13 WEBEX APPEARANCES:

14 For the Reorganized Debtor: John A. Morris  
15 PACHULSKI STANG ZIEHL & JONES, LLP  
16 780 Third Avenue, 34th Floor  
17 New York, NY 10017-2024  
18 (212) 561-7700

17 For The Dugaboy Investment Trust, et al.: Deborah Rose Deitsch-Perez  
18 STINSON, LLP  
19 2200 Ross Avenue, Suite 2900  
20 Dallas, TX 75201  
21 (214) 560-2201

20 For Hunter Mountain Investment Trust: Sawnie A. McEntire  
21 PARSONS MCENTIRE MCCLEARY, PLLC  
22 1700 Pacific Avenue, Suite 4400  
23 Dallas, TX 75201

23 For Hunter Mountain Investment Trust: Roger L. McCleary  
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1 WEBEX APPEARANCES, cont'd.:

2 For Muck Holdings, et al.: Brent Ryan McIlwain  
3 HOLLAND & KNIGHT, LLP  
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7 For James P. Seery, Jr.: Mark Stancil  
8 Joshua Seth Levy  
9 WILLKIE FARR & GALLAGHER, LLP  
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18 Recorded by: Michael F. Edmond, Sr.  
19 UNITED STATES BANKRUPTCY COURT  
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21 Dallas, TX 75242  
22 (214) 753-2062

23 Transcribed by: Kathy Rehling  
24 311 Paradise Cove  
25 Shady Shores, TX 76208  
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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

002839

1                   DALLAS, TEXAS - APRIL 24, 2023 - 1:39 P.M.

2                   THE COURT: I will now turn to our Highland matters.  
3 We have two of them. The first one we had scheduled I think  
4 may have been worked out, but it is the Dugaboy and Hunter  
5 Mountain adversary proceeding -- or, well, not adversary  
6 proceeding, a motion for leave to file an adversary proceeding  
7 regarding valuation. This is Case No. 19-34054.

8                   Who do we have appearing for the Movant this afternoon?

9                   MS. DEITSCH-PEREZ: Good morning, Your Honor. This  
10 is Deborah Deitsch-Perez from Stinson for the Movants.

11                  THE COURT: All right. Thank you. Do we have you  
12 representing both Movants, Ms. Deitsch-Perez?

13                  MS. DEITSCH-PEREZ: That's correct.

14                  THE COURT: All right. Mr. Morris, I see you have  
15 your video turned on. You're representing the Debtor today,  
16 or Reorganized Debtor; is that correct?

17                  MR. MORRIS: Yes, Your Honor. Good afternoon.

18                  THE COURT: Good afternoon.

19                  Do we have any other appearances on this matter?

20                  All right. Well, am I correct you've worked out something  
21 procedurally on this?

22                  MS. DEITSCH-PEREZ: Yeah, let me report. We have  
23 been negotiating over several weeks about information to be  
24 provided to the Movants, and additional information was indeed  
25 provided on Friday. I don't know if you've noticed, but the

1 reports have an additional section with some additional  
2 information.

3 We're going through it. We think there are probably still  
4 some -- some additional information that we need, and so we  
5 will first reach out to Mr. Morris and attempt to negotiate  
6 over that information. And if we are successful, wonderful.  
7 If we are unsuccessful, because the Debtor has agreed that a  
8 gatekeeper motion is not necessary since the adversary would  
9 just be seeking a valuation and not monetary or other relief,  
10 we will then proceed to -- if we cannot work things out with  
11 the Debtor, we'll proceed to file an adversary, which will be  
12 slightly different than the one that was attached to the  
13 gatekeeper motion because we will explain what additional  
14 information is needed and why the information we have is not  
15 sufficient. So it should narrow the scope of the adversary.

16 THE COURT: All right. Thank you. Mr. Morris,  
17 anything you want to add??

18 MR. MORRIS: Yes, just briefly, Your Honor. The  
19 Reorganized Debtor does not believe Hunter Mountain or Dugaboy  
20 is entitled to any information whatsoever. They certainly  
21 have no legal right to the information. It's why they have to  
22 pursue equitable -- an equitable claim. Not an equitable  
23 right, but an equitable claim.

24 Counsel is certainly correct that we negotiated in good  
25 faith to try to provide the information that the Reorganized

1 Debtors believed was -- might be useful to the extent that  
2 someone was really interested in settling the case. We were  
3 unable to come to an agreement. So, under Mr. Seery's  
4 leadership, we acted unilaterally. We produced a wealth of  
5 information on Friday night, including claims data, cash, cash  
6 in reserve, cash in the Claimant Trust, assets, general  
7 descriptions of assets that remain.

8 If they want to pursue a lawsuit, we'll accept service,  
9 with the proviso that we set forth in our opposition to the  
10 original motion, and that is everybody will be held  
11 accountable for unsupported and unsubstantiated allegations.

12 But the ball is in their court. We have produced what  
13 we're prepared to produce. If they want to continue with  
14 litigation, I guess that's what we'll do.

15 MS. DEITSCH-PEREZ: Well, we hope that the Debtor  
16 will continue to negotiate and will hear why we explain --  
17 when we explain why the information isn't enough. So, ever  
18 the optimist, I hold out some hope that we will be able to do  
19 this, if not through this proceeding, through the motion for a  
20 greater stay and for mediation that's also before Your Honor.

21 So, one way or the other, we do hope to resolve this. If  
22 we can't, we will bring the adversary. And I thank you, Mr.  
23 Morris, for agreeing to accept service.

24 THE COURT: All right. Just a procedural question.  
25 Ms. Deitsch-Perez, will you be actually withdrawing this

1 motion for leave, or are you all doing some sort of order  
2 setting forth what you've all agreed to and announced? Just  
3 let me know, so I know what to be expecting.

4 MS. DEITSCH-PEREZ: I think we will try to have an  
5 agreed order to enforce what we're doing. If we fail in that,  
6 I don't suppose it matters very much. We can withdraw the  
7 application and just proceed to file the adversary. I'd  
8 rather get an agreed order up, though, setting forth that the  
9 Debtor has agreed that a gatekeeper is not necessary and that,  
10 as a result, we'll be filing the adversary. So, that's what I  
11 hope, Your Honor, we'll get.

12 THE COURT: All right. Well, just for the record, it  
13 doesn't really matter to me whether you withdraw it or I have  
14 an agreed order. I'm just trying to simplify life. I know  
15 sometimes the Clerk's Office personnel will reach out -- we  
16 need an order, we need an order, we need an order -- if  
17 there's a motion pending that doesn't have an order to match  
18 to it, and I'm just trying to avoid headaches in that regard.

19 MS. DEITSCH-PEREZ: That's why we'll make it clear  
20 what we do one way or the other.

21 THE COURT: Very good.

22 MR. MORRIS: Your Honor, just for the Court's  
23 convenience, I apologize that I don't have the docket numbers,  
24 but the information that we posted and we intended to and did  
25 post it on the docket so that it was available to everybody

1 equally, it's at the back of the two quarterly operating  
2 reports. There's one filed on behalf of the Reorganized  
3 Debtor and then there's one filed on behalf of the Claimant  
4 Trust. But I believe the information in the back of each of  
5 those reports is the same.

6 So, just in case the Court has any curiosity about what  
7 we've disclosed, I just wanted to make sure Your Honor knew  
8 where to find it.

9 THE COURT: Okay. I've got the docket right in front  
10 of me, and I see on Friday Docket No. 3756 was filed by the  
11 Reorganized Debtor, Post-Confirmation Report, and then Docket  
12 3757 was filed by the Claimant Trust. So, thank you. I've  
13 noted those if we want to go back and look.

14 All right. Well, that concludes this Dugaboy/Hunter Trust  
15 motion for leave.

16 Let's now turn to the other Hunter Mountain motion for  
17 leave. We have a status conference -- I think it's a hearing  
18 on what kind of hearing we're going to have -- on Docket Entry  
19 No. 3699. So we probably have a larger appearance list on  
20 this one, so I'll do roll call.

21 Appearing for Hunter Mountain, who do we have?

22 MR. MCENTIRE: Good afternoon, Your Honor. This is  
23 Sawnie McEntire and my partner Roger McCleary with Parsons  
24 McEntire McCleary representing Hunter Mountain.

25 THE COURT: Okay. Now I'm going to just do a roll

1 call. For the Reorganized Debtor, Mr. Morris, will you be  
2 taking the lead on that?

3 MR. MORRIS: Yes, I will, Your Honor. Good  
4 afternoon.

5 THE COURT: Good afternoon.

6 All right. We have four, potentially, named Claims  
7 Purchasers. So I'll ask, who do we have representing Muck  
8 Holdings?

9 MR. MCILWAIN: Your Honor, Brent McIlwain here from  
10 Holland & Knight. I represent Farallon Capital Management,  
11 Stonehill Capital Management, Muck Holdings, and Jessup  
12 Holdings, LLC.

13 THE COURT: Okay. So you represent all four of the  
14 Claims Purchasers?

15 MR. MCILWAIN: That's correct, Your Honor.

16 THE COURT: All right. James Seery is a potential  
17 Defendant identified. Who do we have representing Mr. Seery?

18 MR. STANCIL: Good afternoon, Your Honor. This is  
19 Mark Stancil from Willkie Farr & Gallagher. I'm joined by my  
20 colleague Josh Levy and our co-counsel from Reed Smith, Omar  
21 Alaniz.

22 THE COURT: All right. Thank you.

23 Do we have any other lawyers appearing in this?

24 MR. STANCIL: I think that's it, Your Honor.

25 THE COURT: All right. Well, so, again, I think

1 we're having a hearing on what kind of hearing we're going to  
2 have on your motion for leave, Mr. McEntire. What did you  
3 want to say?

4 MR. MCENTIRE: Well, that's correct, Your Honor.  
5 Good afternoon again.

6 I think there are several issues before the Court during  
7 this status conference. One is the date of the hearing. I  
8 think we certainly preliminarily had agreed over the last 10  
9 days that May 18 was the logical date in light of the motion  
10 practice.

11 The length of the hearing, Mr. Morris has suggested over  
12 four hours or approximately four hours. I've suggested one  
13 and a half hours.

14 And then there is an issue about whether or not evidence  
15 should be allowed.

16 There is a fourth issue that I just want to make sure that  
17 the Court is aware. I don't want to be accused of waiting  
18 this issue as the proceedings progress. And that is we have  
19 raised an issue about Mr. Morris's representation and whether  
20 he has a conflict of interest. We did this in writing in our  
21 reply brief several weeks ago. As a consequence, Mr. Seery  
22 now has new counsel, Mr. Morris of course to represent the  
23 Highland parties, the Reorganized Debtor and the Claimant --  
24 the Highland Claimant Trust. We are concerned that he has a  
25 conflict of interest. It is unclear from whom he is taking

1 his direction or from whom he is deriving his authority.

2 And equally important if not more important, he is taking  
3 positions that are inconsistent with the best interests of the  
4 Reorganized Debtor and the Claimant Trust.

5 I don't think this is the type of issue that could be  
6 resolved today. However, I want to make sure it's on the  
7 record so I'm not accused of waiting as we proceed. But  
8 otherwise, it's the date of the hearing, the length of the  
9 hearing, and whether or not evidence is allowed.

10 I'm prepared to address the merits of our thoughts on each  
11 of those last three -- the date, the length, and the evidence  
12 issues -- if the Court wishes, or I could wait until after  
13 other counsel have made their comments. But I'm prepared to  
14 move forward as the Court wishes.

15 THE COURT: All right. Well, I am not going to  
16 address a conflicts of interest issue today. I think I heard  
17 you saying you don't anticipate the Court would. But I don't  
18 have any sort of pleading in front of me on that, so we'll  
19 just make that clear from the get-go.

20 One of the reasons I'm making that clear from the get-go  
21 is I have not read the brief you filed I don't know what time  
22 on Friday, Docket No. 3758, Mr. McEntire. And then I see an  
23 objection you filed Friday, Docket No. 3761. And then last  
24 night at 9:30 a supplemental support document. I take it none  
25 of --

1 MR. MCENTIRE: Right.

2 THE COURT: -- these issues raised the conflict of  
3 interest issue.

4 MR. MCENTIRE: We addressed the conflicts of issues  
5 in -- certainly in our filing last night. But the brief on  
6 Friday and the objection on Friday is addressing the Court's  
7 email and Mr. Morris's request to hold an evidentiary hearing.  
8 And we oppose that. We object to the conduct of an  
9 evidentiary hearing. And the brief that we filed -- the  
10 objection we filed was supported by case law. I've seen  
11 nothing from Mr. Morris or any of the other counsel in the  
12 case responding to our objection or the cases we've cited.

13 But Your Honor, if you wish, I could just move forward  
14 right now and address the evidentiary issue, if you wish.

15 THE COURT: All right. Well, I'm backing up. This  
16 shows 9:10 a.m. this morning, the 3761. Am I on the wrong  
17 thing?

18 MR. MCENTIRE: I think you're -- what we did this  
19 morning at Mr. Morris's request is we sent in a redline  
20 version of the revised complaint to the Court's attention.  
21 The actual revised complaint was filed last night, and all  
22 that was done this morning was, at Mr. Morris's request, to  
23 facilitate his review of the new complaint, was to redline it.

24 THE COURT: All right. Well, and then, okay, the  
25 brief you filed was at 4:55 p.m. Friday.

1 MR. MCENTIRE: Yes, ma'am.

2 THE COURT: I can assure you, we were still all  
3 working then, but unless you notify my courtroom deputy that  
4 you have filed something sort of on the eve of a hearing,  
5 we're not necessarily in chambers going to go back and scroll  
6 the docket. We had court on other matters this morning, so we  
7 were focused on that. I've not seen your brief. But anyway,  
8 you can argue obviously what you want to argue.

9 Okay. So let's talk about -- I think you wanted to talk  
10 about evidence first.

11 MR. MCENTIRE: Yes, ma'am.

12 THE COURT: So I'm happy to hear about that topic  
13 first. Because, obviously, the other issues -- length of  
14 hearing, date of hearing -- hinge on that. So what do you --

15 MR. MCENTIRE: I agree.

16 THE COURT: What do you say about this?

17 MR. MCENTIRE: All right. Well, earlier, I think,  
18 last week, or perhaps it was the end of the previous week, Mr.  
19 Morris had issued an email requesting a four-hour hearing  
20 because he wanted to cross-examine Mr. Dondero and otherwise  
21 have a full-blown evidentiary hearing. Opening statements,  
22 final argument, and witness examinations.

23 We responded immediately by email objecting to the  
24 evidentiary format. There was a series of exchanges between  
25 my office, Mr. Morris's office, and your chambers, Your Honor,

1 where Ms. Ellison indicated that you were initially inclined  
2 to grant an evidentiary hearing.

3 That was followed by an email on April 19th of last week  
4 where you suggested in your email that the issue of  
5 colorability, which is really the gatekeeper function that the  
6 Court's serving, as the Court is aware, that the standard for  
7 colorability was somehow greater than the standard for  
8 plausibility under a 12(b)(6) motion.

9 In the email, Ms. Ellison suggested that it was perhaps  
10 the Court's initial thinking that there was a higher hurdle  
11 associated with the gatekeeping function than a traditional  
12 12(b)(6) inquiry.

13 We have done substantial research following that email  
14 exchange, and I will also point out to the Court we actually  
15 briefed the 12(b)(6) standard in our original emergency motion  
16 for leave. So this is not new to us. We had actually briefed  
17 it originally in our original motion that was filed back in  
18 late March. March 28th, I believe.

19 But in light of the Court's communication, we did further  
20 research. We have found no cases that suggest that the  
21 inquiry for colorability is greater than the plausibility  
22 standard under *Twombly*. In fact, we found cases that suggest  
23 just the opposite. The *Gonzalez* case which was cited is a  
24 Northern District of Texas case. It was a gatekeeper case.  
25 Not a bankruptcy case. But it was a gatekeeper case on an

1 ERISA claim that simply said that the plaintiff simply had to  
2 be able to establish an arguable claim.

3 The *Deepwater Horizon* case, which is a Fifth Circuit case,  
4 also states that the case -- the claim must only have some  
5 possible validity.

6 So the threshold inquiry is very, very low. Evidence is  
7 not allowed.

8 The *Gonzalez* case also suggested that the Court, similar  
9 to a 12(b)(6) inquiry, is limited to the four corners of the  
10 principal pleading -- in this case, the complaint, or now the  
11 revised complaint.

12 So we don't believe that --

13 THE COURT: So, Mr. McEntire, --

14 MR. MCENTIRE: Yes, Your Honor.

15 THE COURT: -- let me -- help me with this. I'm  
16 walking through -- because obviously the question we're  
17 drilling down on is what is the appropriate legal standard for  
18 the Court to apply --

19 MR. MCENTIRE: Yes.

20 THE COURT: -- in performing the gatekeeping  
21 function. So I started the same place I guess you and  
22 everyone else started, and that is with the plan, the  
23 gatekeeping provision in the plan. And it starts on the  
24 bottom of Page 50 and goes over to 51.

25 And you probably discovered, the same as I discovered,

1 that it doesn't give the appropriate legal standard. It just  
2 says that the Bankruptcy Court -- that no enjoined party may  
3 commence or pursue a claim or cause of action of any kind  
4 against any protected party without the Bankruptcy Court --  
5 turn over to Page 51 -- first determining, after notice and a  
6 hearing, that such claim or cause of action represents a  
7 colorable claim of any kind. And then the last sentence of  
8 that paragraph: "The Bankruptcy Court will have sole and  
9 exclusive jurisdiction to determine whether a claim or cause  
10 of action is colorable."

11 Okay? So all that really tells us is that there has to be  
12 notice and a hearing. That doesn't say what kind of hearing,  
13 evidentiary or otherwise, and doesn't elaborate on colorable.

14 So, beyond that, here was my legal thinking. And maybe  
15 this is all fully explored in your brief. I just don't know.  
16 I thought, well, what legal standard do Bankruptcy Courts  
17 apply in the *Barton Doctrine* context when someone is seeking  
18 leave to sue a bankruptcy trustee? And then I thought, what  
19 legal standard do Bankruptcy Courts apply in a *Louisiana World*  
20 *Exposition*-type context if an unsecured creditors' committee  
21 or other party brings a *Louisiana World Exposition* motion,  
22 saying, we'd like leave to sue a party because the debtor-in-  
23 possession is conflicted or whatever reason.

24 And so before we get to *Deepwater Horizon* and the other  
25 cases, did you find any legal authority in the *Barton Doctrine*

1 context that you think sheds light? Because that seems to me  
2 the most analogous context, right?

3 MR. MCENTIRE: Specifically to answer -- to respond  
4 to your question directly, the answer is no. What we did find  
5 specifically, though, was the case, as I'd indicated, the  
6 Fifth Circuit directs that a 12(b)(6) standard be applied to  
7 the issue of colorability. And that's the *Trippodo* case.

8 THE COURT: The what case?

9 MR. MCENTIRE: And that's also cited -- the *Trippodo*.  
10 T-R-I-P-P-E-D-O [sic]. That is a Southern District of Texas  
11 case that cites a Fifth Circuit precedent that directs that a  
12 12(b)(6) standard be used as a template, if you will, for  
13 determining colorability. And we've also cited that in our  
14 brief.

15 THE COURT: And that, was that the one that was in an  
16 ERISA context?

17 MR. MCENTIRE: No, ma'am. That was *Gonzalez*. And  
18 that's cited on Page 7 of our brief.

19 THE COURT: And so --

20 MR. MCENTIRE: That was a gatekeeper -- a gatekeeper  
21 issue. Before you -- you have to satisfy certain criteria  
22 before the Court will allow the ERISA to even be filed, the  
23 ERISA claim to even be filed. And so it was akin to a  
24 gatekeeper function. And they applied specifically a  
25 colorability or 12(b)(6) standard.

1 THE COURT: I'm sorry. What was the context? What  
2 was -- who was seeking to sue whom over what in the *Trippodo*  
3 case?

4 MR. MCENTIRE: The -- it was an ERISA claim. It was  
5 in the -- I believe it's the Northern --

6 THE COURT: Oh, I thought you said is not an ERISA  
7 claim.

8 MR. MCENTIRE: Well, no, I apologize. I may have  
9 sorted my words. It was an ERISA claim. It was in the  
10 Northern District of Texas, I believe. I have it right here.  
11 One second. Yes, it's Northern District of Texas. It's a  
12 2002 case. It was dealing with the amendment of pleadings to  
13 bring forth an ERISA claim. And the issue there is whether or  
14 not there's a colorable claim or whether it was frivolous or  
15 futile. And the court determined that a -- that before you  
16 even get to the 12(b)(6) level -- this case can actually stand  
17 for the proposition that it's -- that it's even less than a  
18 12(b)(6) standard. But before you even get there, you have to  
19 address it from a futility or frivolity or is there any  
20 evidence. The actual words that are used are, one second,  
21 "any arguable claim."

22 THE COURT: Okay.

23 MR. MCENTIRE: Not plausibility. Not on the merits.  
24 But any arguable claim. It's the lowest of possible  
25 thresholds.

1 THE COURT: All right. Well, --

2 MR. MCENTIRE: And that's --

3 THE COURT: -- so, but just to be clear, you didn't  
4 find anything in the *Barton Doctrine* context out there?

5 MR. MCENTIRE: I did not.

6 THE COURT: And what about --

7 MR. MCENTIRE: Now, to be honest --

8 THE COURT: Say again?

9 MR. MCENTIRE: To be clear, I did not -- I did not --  
10 I apologize. We did not specifically look at *Barton*. I'll be  
11 glad to do that and supplement as necessary.

12 THE COURT: Okay. And *Louisiana World*, you didn't  
13 find anything that would shed light in that line of cases?

14 MR. MCENTIRE: I think we did. I believe *Louisiana*  
15 *World* supports our position here.

16 THE COURT: It says what legal standard applies?

17 MR. MCENTIRE: One second. One second, Your Honor,  
18 please.

19 (Counsel confer.)

20 MR. MCENTIRE: One moment, please, Your Honor.

21 (Counsel confer.)

22 MR. MCENTIRE: Can I -- I might have to supplement  
23 that. I have someone looking for it right this second.

24 (Counsel confer.)

25 MR. MCENTIRE: It was a conflict issue.

1 (Counsel confer.)

2 MR. MCENTIRE: The *Louisiana World* case, it was a  
3 little bit off topic. It had to do with a conflict of  
4 interest where the creditors' committee had a conflict on  
5 (inaudible) and the Court determined that the case should go  
6 forward. And --

7 THE COURT: I know it was a different context. I'm  
8 just trying to find something analogous to this gatekeeper  
9 motion. And the most analogous things I could think of was  
10 motions for leave that have been filed in a Bankruptcy Court  
11 pursuant to the *Barton Doctrine*, wanting to sue a bankruptcy  
12 trustee, where the Bankruptcy Court acts as a gatekeeper, and  
13 then a *Louisiana World*-type situation where a creditors'  
14 committee files a motion seeking leave to sue somebody,  
15 arguing the debtor is not doing it, for either conflicts or  
16 some other reason.

17 All right. So, assuming your case authority is the  
18 guiding authority here and it's a Rule 12(b)(6)-type context,  
19 you're saying I should look at the four corners of the  
20 documents, or anything else the Fifth Circuit has said I can  
21 look at, take judicial notice of, in a 12(b)(6) context and  
22 not hear evidence?

23 But part of the reason we're having this dispute, right,  
24 is because you've put forward some evidence? Do I understand  
25 that correctly? And I have not dove into weeds on this yet,

1 but I understand there were affidavits submitted by you.

2 Correct?

3 MR. MCENTIRE: In order to make this determination,  
4 you do not need to consider the Dondero affidavits that Mr.  
5 Morris has raised. You do not need to consider any of the  
6 documents that are actually associated with our motion.

7 We recognize that the application under the 12(b)(6)  
8 standard, you'd be relegated to the four corners of the actual  
9 complaint itself -- in this case, the revised complaint.

10 The 12(b)(6) standard is a guide. We take that to mean  
11 that it's a low standard. It's, at most, a plausibility  
12 standard, but we believe actually less.

13 We've provided the Dondero declaration -- declarations,  
14 plural; there were two -- together with some documents to give  
15 -- provide additional background for the Court. But Mr.  
16 Morris has raised an objection. And under the circumstances,  
17 assuming the Court follows the guideline of the *Trippodo* case,  
18 then we would understand the Court would not consider the  
19 actual Dondero declarations.

20 THE COURT: Does that mean you're withdrawing the  
21 affidavits?

22 MR. MORRIS: I object to that, Your Honor. I really  
23 -- I'll let counsel finish. This is just not right.

24 THE COURT: Okay.

25 MR. MCENTIRE: Well, I'm not sure what --

1 THE COURT: Your response to that?

2 MR. MCENTIRE: I think what we're doing is the  
3 correct legal statement and articulation of what the law is.  
4 Whether Mr. Morris likes it or not, I suppose, you know, with  
5 all due deference to Mr. Morris, it's not a question of  
6 whether I'm doing something that he likes. It's what I think  
7 is legally correct. And I think that I've presented that as  
8 best as I can to the Court.

9 THE COURT: Okay. Well, you never --

10 MR. MCENTIRE: By the way, --

11 THE COURT: Assuming I would allow withdrawal of the  
12 affidavits, is that what you're seeking to do?

13 MR. MCENTIRE: Yes. If the Court is suggesting that  
14 if I leave the affidavits attached to the motion that the  
15 Court is going to allow this to become, effectively, a trial  
16 on the merits -- when it shouldn't be, because that's not what  
17 this is about, this is not a test of witness credibility, this  
18 is not a test of the ultimate merits of the claim -- if that  
19 is the situation that I'm being placed, then the answer is we  
20 would not want to withdraw them but we will.

21 THE COURT: Okay. Well, you don't want to but you  
22 will? I mean, I --

23 MR. MCENTIRE: Yes, correct. We do.

24 THE COURT: I feel like that means I need to explore  
25 this a little, because I don't want -- well, any time

1 affidavits are put forward in this Court, or I think any other  
2 court I know of, parties are always given the chance to cross-  
3 examine an affiant or a declarant. Okay? We always allow  
4 that if there's an objection to the underlying motion. So, --

5 MR. MCENTIRE: Well, here, --

6 THE COURT: -- I just want to make sure you're clear,  
7 you put it in and then the other side said, well, we want a  
8 chance to cross-examine the affiant. I allow that --

9 MR. MCENTIRE: Then --

10 THE COURT: -- always, a hundred percent, as does  
11 every other judge I know. If there's an affidavit, if someone  
12 wants to cross-examine them, obviously, there might be two  
13 sides of the story. So I just want to be clear on what your  
14 desired outcome is --

15 MR. MCENTIRE: Fair enough. I understand.

16 THE COURT: -- and request is.

17 MR. MCENTIRE: I understand the Court's statement.

18 We withdraw the Dondero affidavits for purposes of this  
19 exercise and your consideration.

20 THE COURT: Okay.

21 MR. MORRIS: Can I be heard, Your Honor?

22 THE COURT: Yes. I'm going to let you be heard on  
23 that. But any other argument you want to make, Mr. McEntire?

24 MR. MCENTIRE: Yes. One last thing. We did find the  
25 reference to *Louisiana World*, and it was determined that no

1 evidence was appropriate and that the court should limit its  
2 inquiry based upon the allegations in the pleading, and in  
3 that case, to determine whether it was a colorable claim,  
4 which would, if pursued successfully, could have increased the  
5 value of the estate. So, the *Louisiana World* case does  
6 suggest that there's not an evidentiary component to this  
7 inquiry.

8 THE COURT: Okay. Let me be clear. You first said  
9 it held no evidence was appropriate, and then you said  
10 suggest. So, did the court actually tackle what is the legal  
11 standard and is evidence appropriate? Did it actually tackle  
12 those specific issues? That's all I really care about.  
13 Because I've read the case.

14 MR. MCENTIRE: Yes. The citation in our brief is  
15 that the Court need not be satisfied that there's an  
16 evidentiary basis on the merits of the claim to be asserted.  
17 And we have cited the *Louisiana World* case at Pages 252 and  
18 253. Allegations were sufficient and no evidentiary hearing  
19 was necessary to determine -- in this case it was a breach of  
20 fiduciary duty claim -- whether it had -- whether it was  
21 appropriately colorable to move forward.

22 THE COURT: Okay. Courtney, you can be drilling down  
23 on that.

24 All right. Anything else?

25 MR. MCENTIRE: On the evidence issue, no, Your Honor.

1 We would, again, if the Court has time, we would encourage the  
2 Court to read our brief. We believe we've laid out the law  
3 fairly succinctly and clearly, and we stand by our brief --

4 THE COURT: All right.

5 MR. MCENTIRE: -- and our objection.

6 THE COURT: Well, of course I have time and I will  
7 read it, but I just, given when it was filed and that I wasn't  
8 alerted to it being there, I'm just explaining why I have not  
9 read it yet.

10 All right. Mr. Morris, your argument?

11 MR. MORRIS: Good afternoon, Your Honor. John Morris  
12 for the Claimant Trust and for the Reorganized Debtor.

13 Your Honor, we understood this to be a status conference.  
14 We didn't understand this to be a day for rulings by the  
15 Court. We didn't understand there was an issue for the Court  
16 to determine today. Hunter Mountain has now filed two briefs  
17 on the topic of the standard of colorability, and they've made  
18 an exhaustive argument, doing all of this before we -- before  
19 any of the objecting parties have had an opportunity to be  
20 heard.

21 Our brief is due on May 4th, and we respectfully request  
22 that the Court, subject to other comments that I have this  
23 afternoon, withhold judgment on anything that's happened here  
24 today.

25 Mr. McEntire has completely misstated the law. He has no

1 understanding, apparently, of what a gatekeeper is and how it  
2 functions under *Barton*. And there's been no reference at all  
3 to the purpose of the gatekeeper, which is set forth  
4 explicitly, clearly, and in great detail in the Court's  
5 confirmation order. Okay?

6 12(b)(6), I don't want to -- I don't want to get too far  
7 ahead of myself, but 12(b)(6) has nothing to do with this  
8 case. Of course this has turned into a bit of a circus, Your  
9 Honor, as it always does in Highland. This was a very simple  
10 matter. Hunter Mountain filed a motion for leave to file a  
11 complaint under the gatekeeper provision of Highland's plan.  
12 They attached a copy of their proposed complaint. And  
13 Paragraph 1 of their motion says, The motion is separately  
14 supported by the declarations of James Dondero dated May 22nd  
15 -- May 2022 and February 2023.

16 And these aren't just two declarations, Your Honor.  
17 There's almost 400 pages of attachments to these declarations.  
18 And now, 10 days before our opposition is due, because Mr.  
19 Dondero fears being cross-examined, Hunter Mountain just  
20 willy-nilly thinks they can withdraw those affidavit and  
21 declarations? That is greatly prejudicial, and I just can't  
22 believe what I just heard.

23 They don't want to do it, they don't want to subject their  
24 client to some cross-examination, when they put their  
25 declarations into evidence, when they said that their motion

1 was based on these declarations.

2 We should have that opportunity, Your Honor. Forget about  
3 the standard. As Your Honor rightly pointed, the rule is very  
4 clear. You offer declarations; we get to cross-examine.

5 On Friday night, we got Hunter Mountain's objection.  
6 Their, really, their second attempt to deal with colorability.  
7 Last night, they filed what they characterize as support or a  
8 supplemental document, which Hunter Mountain insists is not an  
9 amendment of their pleading.

10 Your Honor, I've had Hunter Mountain provide the Court  
11 with a blackline. I would respectfully request that the Court  
12 instruct Hunter Mountain to file it on the docket so that it  
13 becomes part of the official record in this case. If Your  
14 Honor reviews the blackline version, which is not on the  
15 docket but was emailed earlier today at my request, the Court  
16 will see just how extensive the changes are to this pleading.  
17 So here they are, without leave of Court, without filing a  
18 motion to amend, without anything, they simply dump a brand  
19 new complaint on us 10 days before our opposition is due, and  
20 today tell us they're not going to include the Dondero  
21 declarations.

22 This is all terribly wrong, Your Honor. This is not the  
23 way the process is supposed to work. I've seen a lot in this  
24 case, but this is a new standard for chaos.

25 The changes are extensive. And I just want to point out a

1 couple of them. They now claim that Mr. Seery exercised  
2 "despotic control" over the Debtor. I believe I have the  
3 right to inquire as to the factual basis for that ridiculous  
4 allegation.

5 They allege in Paragraph 2 of the newly-amended complaint  
6 that Seery "failed to cause the Debtor to make financial  
7 disclosures, as required."

8 Your Honor has been in this case since December of 2019.  
9 As this Court is aware, the single only financial disclosure  
10 that was not filed with the Court was pursuant to Rule 2015.3.  
11 Mr. Dondero commissioned his investigation. As his  
12 declarations say, he caused Mr. Rukavina and Mr. Draper to  
13 complain to the U.S. Trustee's Office. Nothing.

14 They objected to confirmation. They made a motion. They  
15 went to the District Court. They went to the Fifth Circuit.  
16 That one single document is not a basis to say that Mr. Seery  
17 failed to cause the Debtor to make financial disclosures.

18 We have the right, Your Honor, under the -- under the  
19 gatekeeper, under this Court's confirmed plan -- which, by the  
20 way, is worth nothing that in their newly-amended proposed  
21 complaint they specifically say they do not challenge the  
22 confirmation order. And I would encourage the Court to look  
23 at Paragraphs 77 through 80. They don't challenge that order.  
24 And that order tells us that we have the ability to inquire as  
25 to the good faith nature of these allegations. It has nothing

1 to do with 12(b)(6).

2 Because these changes are so extensive, Your Honor, we  
3 think we need a further change to the schedule. We believe  
4 the law says that this is an amendment that requires a  
5 resetting of the clock. But we don't need that much time,  
6 Your Honor. We need just a brief adjustment to the schedule.  
7 And we specifically propose that the objection deadline be  
8 extended by one week, from May 4th to May 11th. The reply  
9 deadline should be extended by one week, from May 11th to May  
10 18th. And the hearing date should be extended by one week,  
11 from May 18th to May 25th, or any day the following week after  
12 Memorial Day.

13 The objecting parties should not be prejudiced by Hunter  
14 Mountain's continued evolution of their claims. This is --  
15 and this approach is completely fair and reasonable.

16 And we want to touch just for a moment on this concept of  
17 derivative standing. Again, Your Honor, we plan on addressing  
18 this in detail in our submission. We shouldn't be required to  
19 set forth all of our arguments before they're fully  
20 formulated, pursuant to the Court's scheduling order. But I  
21 do want to make a couple of points.

22 Another attorney representing Hunter Mountain filed what  
23 it called the valuation motion. The first iteration, Your  
24 Honor will recall, was actually filed by Doug Draper on behalf  
25 of Dugaboy last summer. Then Louis Phillips represented

1 Hunter Mountain. When that motion was denied, the Stinson  
2 firm came in and represented Hunter Mountain. They filed a  
3 new valuation motion.

4 Here's the irony, Your Honor. Mr. Dondero and Hunter  
5 Mountain and Dugaboy keep telling the Court assets exceed  
6 liabilities. Assets exceed liabilities. And you know our  
7 position on that, Your Honor. They may; they may not. It's  
8 also irrelevant at the end of the day because of the  
9 indemnification claims. And we'll talk about that more in a  
10 moment.

11 But the important thing is that, if assets exceed  
12 liabilities, how could anybody other than, according to Hunter  
13 Mountain, Hunter Mountain have been harmed by anything?  
14 Creditors, according to Mr. Dondero, are getting paid in full.  
15 How could any of these allegations have harmed any beneficial  
16 holder of an interest in the Claimant Trust today? According  
17 to Mr. Dondero, they're going to get paid a hundred cents on  
18 the dollar. Where's the damages?

19 There's no derivative claim here. This is a -- this is an  
20 action by and for Hunter Mountain and nobody else. And it's  
21 frivolous. And we will prove that.

22 Make no mistake. The Trust and the Reorganized Debtor has  
23 a substantial outcome in this motion, and that's why I'm here.  
24 I'm here because the Trust has substantial indemnification  
25 obligations. Mr. Dondero seems to forget that. But those

1 indemnification obligations are real, and the Trust and the  
2 Reorganized Debtor have an affirmative duty on behalf of the  
3 Claimant Trust beneficiaries to make sure that baseless  
4 litigation is nipped in the bud. And that's why I'm here.

5 There is no rule of law that says you let the fox into the  
6 henhouse simply because the fox fabricates a story that the  
7 henhouse is on fire. The henhouse is not on fire, and an  
8 evidentiary hearing will prove that.

9 As for the subject at hand, it's important to remember  
10 that the underlying motion is not a defendant's motion to  
11 dismiss, but rather it's Hunter Mountain's motion for leave to  
12 file a complaint under the gatekeeper. The burden has  
13 shifted. They have the burden, not the putative defendants,  
14 but Hunter Mountain.

15 The gatekeeper provision was contained in Highland's plan,  
16 it was confirmed by this Court, and it was confirmed -- it was  
17 affirmed by the Fifth Circuit Court of Appeals.

18 We appreciate the Court's preliminary view that an  
19 evidentiary hearing is appropriate here, and we understand why  
20 there's two reasons for that: Because they put declarations  
21 into the record; and more importantly, because the gatekeeper  
22 provision requires it.

23 Hunter Mountain's objection to an evidentiary hearing is  
24 disingenuous. Mr. Patrick, Mr. Dondero, Hunter Mountain, they  
25 all know the gatekeeper analysis is not a 12(b)(6) analysis,

1 for at least the following reasons. Mr. Dondero and his  
2 affiliates have been fighting the gatekeeper provision since  
3 the moment it was proposed. They fought it at confirmation,  
4 they appealed it to the Fifth Circuit, they objected when this  
5 Court entered an order approving the gatekeeper without  
6 modification, in conformity with the Fifth Circuit's decision,  
7 and then going back to the Fifth Circuit to challenge the  
8 gatekeeper.

9 Why would you do all of that? Why would you spend that  
10 money? Why would you exhaust every potential avenue? If you  
11 thought it meant nothing, if you thought it was a less  
12 standard than 12(b)(6), who would do that? I think their  
13 conduct proves that they know the standard is substantially  
14 higher. And if they only read the Court's confirmation order,  
15 they would know that for certain.

16 Hunter Mountain's own pleadings prove that they know this  
17 is not a 12(b)(6) standard. If they thought it was a 12(b)(6)  
18 standard, they wouldn't have specifically and expressly asked  
19 the Court to look beyond the four corners of the complaint.  
20 Right? That's what they did in Paragraph 1 of their motion,  
21 the very first document filed here, Docket No. 3699, Paragraph  
22 1: The motion is supported by the declarations of Jim  
23 Dondero.

24 Why would you do that if you thought all the Court had to  
25 do was look at the four corners? They'll never be able to

1 rationally explain that. They're attempting to, and I hope  
2 the Court won't let them, they're attempting to withdraw the  
3 declarations today because they found out afterwards that when  
4 you put declarations into the record people are allowed to  
5 cross-examine.

6 The Court should not allow Hunter Mountain to play these  
7 games.

8 There's more. They know they don't have the goods here.  
9 How do you know they don't have the goods here? Because the  
10 facts are based on Mr. Dondero and Mr. Dondero alone. This  
11 email that he sent to Mr. Seery in December 2017, as well as  
12 this phone call or phone calls that he allegedly had with one  
13 or two representatives of Farallon. This is all Mr. Dondero.  
14 He had all of this information in the spring of 2021. Did he  
15 bring anything to this Court's attention? No. You know what  
16 he did? He sought discovery. And he filed a 202 petition in  
17 Texas state court.

18 If you have the goods, if you have the evidence, bring  
19 your claim. He didn't do that because he knew he didn't have  
20 the evidence. He knew he didn't have the goods. So they went  
21 fishing. They went fishing to state -- Texas state court, and  
22 they came up with nothing. Right? It was removed to this  
23 Court.

24 Your Honor will recall that in early 2022 Your Honor had a  
25 hearing and remanded it back to state court. Mr. Dondero

1 filed another declaration with another version of his phone  
2 call with Farallon. And Texas state court dismissed the  
3 petition.

4 Hunter Mountain waits seven months. I don't know why they  
5 wait seven months, but they wait seven months. They have the  
6 same evidence. They don't file a complaint. Instead, Hunter  
7 Mountain files another 202 petition, searching for evidence.  
8 They went fishing again, and again went home empty, with Mr.  
9 Dondero's third recitation of his conversation with Farallon,  
10 but a second and different Texas state court said, no dice, no  
11 discovery.

12 That's why they're here now, because they swung and they  
13 missed twice. They have no better evidence today than they  
14 did in the spring of 2001 [sic] when a decision was made that  
15 they didn't have enough to bring an action. They know  
16 12(b)(6) is not the standard here, Your Honor.

17 Mr. Stancil is here today on behalf of Mr. Seery. I  
18 understand Mr. Stancil wants to introduce himself to the Court  
19 and provide some very preliminary views on the gatekeeper  
20 standard and related matters. Highland -- Holland & Knight is  
21 here on behalf of the Claim Purchasers, and I'm sure they'll  
22 want to weigh in.

23 In the end, Your Honor, this was supposed to be a status  
24 conference. There's nothing for the Court to decide. A  
25 scheduling order was in place, and we'd respectfully request

1 that it be adjusted in light of, you know, these amended  
2 pleadings. I don't know why they -- you know, their amended  
3 pleadings. Just look at the blackline.

4 We should have the allotted time to respond to these  
5 issues, and we will do so. And I'm very confident that at the  
6 completion of briefing the Court will find it not only  
7 appropriate but necessary to hear evidence on this motion.

8 That's all I have, Your Honor.

9 THE COURT: All right. Let me be clear. The  
10 redline, should I have it somehow? It was not filed on the  
11 docket. You're wanting --

12 MR. MORRIS: It was not, Your Honor, --

13 THE COURT: Okay.

14 MR. MORRIS: -- just to be clear. I think -- I  
15 brought to Mr. McEntire's attention this morning that the  
16 Court's prior instruction in this case was that when you were  
17 going to file amended documents, when you were going to use  
18 amended documents, that blacklines should be filed with the  
19 Court. And a blackline was sent I believe to Ms. Ellison and  
20 to all counsel of record, but it wasn't filed on the docket.  
21 And I respectfully request that it be put on the docket,  
22 because I think that needs to be part of the record of this  
23 case.

24 THE COURT: Okay. I just -- I got from Traci the  
25 redline.

1 MR. MORRIS: Yeah. Just open it up. You'll see.

2 THE COURT: It was not sent to her until 12:00 noon,  
3 and then she sent it to me at 1:00-something. So I've got it  
4 now. All right. There it is. It's 43 pages.

5 MR. MCENTIRE: Your Honor? May I respond very  
6 quickly to the --

7 MR. MORRIS: No. Your Honor? Your Honor?

8 THE COURT: I'll let you have rebuttal argument at  
9 the end, --

10 MR. MCENTIRE: Fair enough.

11 THE COURT: -- after I've heard from all of the other  
12 parties in interest.

13 So, who wants to go next? Mr. McIlwain or counsel for Mr.  
14 Seery, Mr. Stancil? Who wants to go next?

15 MR. STANCIL: Your Honor, I think it's -- well, this  
16 is Mark Stancil for Mr. Seery. I think it's my turn.

17 THE COURT: Okay.

18 MR. STANCIL: And I'll try to be brief, Your Honor.  
19 I think it'd be helpful mostly to explain just in a little bit  
20 of detail why we agree completely with Mr. Morris's statement  
21 that Your Honor should await full briefing on this issue.  
22 Just in response to certain of the comments made earlier by  
23 the Plaintiffs, I'd like to just sort of maybe level-set a  
24 little bit.

25 For starters, I was confused that Mr. McEntire said he did

1 not look for cases under *Barton*, because Your Honor  
2 specifically cited *Barton* in the confirmation order in  
3 approving the gatekeeper provision, which I believe it's in  
4 Paragraph 80 in the confirmation order on Page 58. That's  
5 Docket No. 1943. And Your Honor specifically cites the  
6 Supreme Court's *Barton Doctrine*.

7 Moreover, that followed recitation of the extensive  
8 factual findings that supported the requirement of a rigorous  
9 gatekeeping requirement, including Paragraph 77, which the  
10 Court found as fact that Mr. Dondero and the Dondero-related  
11 entities have harassed the Debtor, which has resulted in  
12 further substantial, costly, and time-consuming litigation for  
13 the Debtor.

14 And as particularly relevant here, the Court further found  
15 that this harassment had been specifically directed at Mr.  
16 Seery, among others.

17 The Court further found in Paragraph 78 that Mr. Dondero's  
18 abuse of litigation "was consistent with his comments as set  
19 forth in Mr. Seery's credible testimony that if Mr. Dondero's  
20 plan proposal was not accepted he would 'burn down the  
21 place.'"

22 So, accordingly, Your Honor, the reference to *Barton* is  
23 very much a robust gatekeeping entity -- requirement. And  
24 we're exactly today where the Court had predicted in entering  
25 this order, that the costs and distraction of this litigation

1 are substantial. And if all we're doing is replicating a  
2 12(b)(6) hearing on a motion for leave, we're actually not  
3 doing anything to reduce, as the Court made clear, the  
4 burdens, distractions, of litigation.

5 The Fifth Circuit likewise cited *Barton* in its order  
6 affirming the confirmation order. Specifically, it also  
7 explained that the provisions, these gatekeeper provisions  
8 requiring advance approval were meant to "screen and prevent  
9 bad-faith litigation." Well, that -- if that means only what  
10 the Plaintiffs say it does, then it really doesn't do anything  
11 at all to screen. There's no gatekeeping because their  
12 version of what that means is always policed under 12(b)(6)  
13 standards.

14 Moreover, the essence of bad faith is saying things in a  
15 complaint that are not true and are easily proved to be false.  
16 You know, the irony of their position is if you lard a  
17 complaint up with absolute falsehoods and lies, well, those  
18 have to be taken as true, and so, you know, they'll survive  
19 the motion to dismiss, and so therefore we can file it. That  
20 would turn the bad faith essence of the gatekeeping provisions  
21 here on their head.

22 So we think this is all about *Barton* and its progeny. But  
23 I would also provide Your Honor with maybe a 30-second preview  
24 of why we think *Barton* does have clear support for evidentiary  
25 hearings.

1           We -- I will refer Your Honor to a recent decision of the  
2 Fifth Circuit in a case *In re Foster*, 2023 WL 20872. And that  
3 was from January of this year, in which the Fifth Circuit  
4 affirmed a determination that a post-effective-date litigation  
5 could not be brought against the trustee. It's got a little  
6 bit of a complicated history, but I would -- I'll summarize to  
7 say the suit was filed in the state court, removed to federal  
8 court, and then there was a bankruptcy hearing, evidentiary  
9 hearing, and ultimately the Bankruptcy Court's decision was  
10 affirmed.

11           And we know there's an evidentiary hearing because if we  
12 look at the District Court's appeal opinion in that case, 2022  
13 WL 160240 at \*3, it specifically notes an evidentiary hearing  
14 because they had put a factual question before the Court.

15           But as a further preview to a brief that you'll be  
16 receiving from us, I think our count is up to nine circuits  
17 that apply an abuse of discretion standard to reviews of  
18 determinations under *Barton*. And of course, an abuse of  
19 discretion standard on appeal makes no sense if one is  
20 applying a mere 12(b)(6) standard, which, of course, is *de*  
21 *novo*.

22           One brief word on *Louisiana World*, Your Honor, because I  
23 believe the analogy they were drawing there is akin to a  
24 creditors' committee standing analysis. We're not at all  
25 agreeing that that level of analysis is appropriate here, but

1 I would add just a couple of things about that case.

2 First of all, that's a pre-effective-date question of a  
3 committee's standing to bring a cause of action. This, we're  
4 talking about repeated findings of abuse of process, giving  
5 rise to a gatekeeper action that applies beyond the effective  
6 date.

7 But that aside for the moment, even in the creditors'  
8 committee context, those creditors also have to show that the  
9 underlying action is both colorable and also that the party  
10 that didn't bring it was unjustified. So the Court looks  
11 beyond the mere 12(b)(6) standard in that context.

12 And I would just flatly disagree with Mr. McEntire's  
13 characterization of that decision as saying that evidence is  
14 not required. If Your Honor looks at Footnote 15 in that  
15 decision, which is at Page 248, so we're at 858 F.2d 233 at  
16 248, the court explained why "an evidentiary hearing was  
17 unnecessary under the circumstances." And the circumstances  
18 the court goes on to note are that the officers and directors  
19 "did not object at any time to the committee's application"  
20 and further found that the committee had demonstrated the  
21 existence of a potential cause of action, and the officers and  
22 directors neither refuted any of the committee's claims nor  
23 objected to them. "Under the circumstances, we are at a loss  
24 to understand just what could have been gained from an  
25 evidentiary hearing on an application which drew no

1 objections."

2 So, respectfully, Your Honor, I don't think that case  
3 could possibly stand for a blanket rule that evidence is not  
4 appropriate in support of this, this -- even that analysis.

5 I think, Your Honor, the most important thing I'd like to  
6 ask for is the opportunity, as Mr. Morris mentioned, to write  
7 all this down for you instead of reading case snippets for  
8 you. We're in the middle of writing our brief. And it has  
9 changed quite a bit. We think the brief will be very helpful.

10 I would add, moreover, that there's no harm to be had by  
11 having an evidentiary hearing. If after full briefing Your  
12 Honor were to decide, you know what, this is a 12(b)(6)  
13 standard -- we don't think you will; we think it's actually a  
14 slam dunk to the contrary -- but the Court can, like in many  
15 bench trials, decline to rely on evidence and just say, hey,  
16 I'm not going to look at that, and here's -- here's where we  
17 go. But at least then the hearing will be -- we'll have it,  
18 and we'll have the record.

19 More importantly, we actually think there's enormous value  
20 in getting this right, as the Court of Appeals has told us  
21 getting it right under *Barton* and applying the correct  
22 scrutiny is required.

23 So, unless the Court has questions, I can turn it back to  
24 Mr. Morris or to Mr. McIlwain.

25 THE COURT: All right. I don't think I have

1 questions at the moment of you, but I'll turn to Mr. McIlwain  
2 and see if I have any questions for the collective group at  
3 that point. And of course, I'll go back to Mr. McEntire as  
4 well.

5 All right. Mr. McIlwain, go ahead.

6 MR. MCILWAIN: Thank you, Your Honor. Brent McIlwain  
7 here, again, from Holland & Knight for the Claim Purchasers.  
8 Your Honor, I'll be brief and just echo what Mr. Stancil and  
9 Mr. Morris said.

10 I guess, from a practical standpoint, though, what I'm  
11 most concerned about here is the procedure by which we've  
12 gotten to where we've gotten. It started with a motion for  
13 leave to file this complaint on what was supposed to be three  
14 days' notice. The Court denied that, rightly. That was  
15 appealed, and then there was a *mandamus* to the Fifth Circuit,  
16 all -- all of which were denied.

17 Here we are on the eve of this status conference,  
18 objections are filed, new pleadings are filed. I think what's  
19 being demonstrated is precisely why this Court has a  
20 gatekeeper order in place. Mr. Dondero and his counsel are  
21 vexatious litigators, and they're looking for any opportunity  
22 to get a leg up on us. On anybody in their path, frankly.  
23 And the Court should give us a reasonable opportunity to brief  
24 this, should give us a reasonable opportunity to present our  
25 case, and we should know what we're fighting against. Are we

1 fighting against a motion for leave that's supported by  
2 affidavit or not? And if we're not, they need to file a new  
3 motion or strike the affidavits on the record.

4 We can't have this ever-evolving pushing against a rope to  
5 determine what exactly we're fighting against. And the Court,  
6 the Court and the parties who are the subject, frankly, of  
7 what are fantastical make-believe theories from Mr. Dondero  
8 are entitled to know what the story is. And we're entitled to  
9 know what the pleading is. And if the pleading is -- as soon  
10 as the pleading is set, then we can respond.

11 So we're here to ask the Court, if we want to set a  
12 hearing, let's close the pleadings as it relates to Hunter  
13 Mountain. They shouldn't be even filing any further. Because  
14 if they're going to file something further, we need more time.  
15 And I'm okay with the schedule that Mr. Morris has outlined,  
16 but, frankly, it's generous to Hunter Mountain.

17 Anyway, Your Honor, I don't have anything substantively to  
18 add, but we will include a comprehensive response in our  
19 responsive brief whenever that filing, whenever we can  
20 determine exactly what we're responding to.

21 Thank you, ma'am.

22 THE COURT: All right. Mr. McEntire, you're the  
23 Movant, you have the last word.

24 MR. MCENTIRE: Yes, ma'am. Thank you. I'll try to  
25 be brief here.

1 Mr. Morris says -- I wrote down his words -- if you have  
2 the evidence, bring the claim. The revised --

3 THE COURT: I'm sorry, I did not -- I didn't hear  
4 what you said. Could you repeat what you just said?

5 MR. MCENTIRE: Yes, ma'am. Mr. Morris just told the  
6 Court that if they have the evidence, bring the claim. We  
7 have the evidence. And all you need to do is to look at the  
8 four corners of the revised claim that is before you. And you  
9 do not need to look at the Dondero declarations.

10 THE COURT: Let me --

11 MR. MCENTIRE: And we withdraw the Dondero --

12 THE COURT: Let me -- can I stop you right there? I  
13 mean, --

14 MR. MCENTIRE: Yes.

15 THE COURT: -- the point was made by I forget which  
16 lawyer now that your original motion for leave attached  
17 something like 387 pages of not just Dondero affidavits, but  
18 other evidentiary support. So I'd just like you to respond to  
19 that.

20 MR. MCENTIRE: Sure.

21 THE COURT: Why did you initially out of the gate  
22 think the Court needed to consider 387 pages of attachments?  
23 And --

24 MR. MCENTIRE: We never saw this, Your Honor, we  
25 never saw this as an evidentiary inquiry.

1 THE COURT: But --

2 MR. MCENTIRE: That was simply background for the  
3 Court. The allegations themselves can --

4 THE COURT: But stop. Why would you -- call it  
5 background, evidence, whatever you want to call it -- why  
6 would you submit all of that if you think I just need to look  
7 at the four corners and apply a 12(b)(6) standard?

8 MR. MCENTIRE: I would suggest -- fair enough. I  
9 would suggest that probably 80 to 90 percent if not more of  
10 those documents are from the Court's docket. They are simply  
11 docket references in the Court's docket. Very little is  
12 outside the four corners of the proceedings that you've been  
13 administering, Your Honor.

14 They're also referenced in the four corners of our  
15 pleading. The allegations are set forth in the four corners  
16 of our pleading. You don't need to go to the docket -- you  
17 may, if you wish -- but you don't need to go to the docket to  
18 look at those documents, because the allegations speak for  
19 themselves.

20 And the revised complaint that is before you or that was  
21 with our motion -- and by the way, responding to one of other  
22 counsel's statements, I don't have to seek leave to amend a  
23 complaint that has not been filed yet. What we're seeking to  
24 do is we're seeking to bring forth to the Court a complaint  
25 for your consideration as to whether we state a colorable

1 claim. And we don't need Mr. Dondero's declarations, and we  
2 don't -- you don't need to go look at all those documents.  
3 You can look at the four corners of our complaint and make  
4 that decision.

5 And to -- so we -- Mr. Morris's invitation is we have the  
6 evidence, bring the claim. That's exactly what we're doing.  
7 Because if you review the claim, much of which is financial in  
8 nature -- and by the way, the -- with all due deference to Mr.  
9 Morris, I've heard the name Mr. Dondero probably 50 times  
10 during this hearing. And we don't need Mr. Dondero to support  
11 the four corners of this complaint. And if you look at the  
12 complaint itself, there's no reference to Mr. Dondero -- or if  
13 there is, it's very few -- in the complaint itself. And this  
14 is -- Mr. Dondero is not bringing this particular motion.  
15 This is a motion by Hunter Mountain. Mr. Dondero is not  
16 directing the filing of this motion. This is a motion filed  
17 on behalf of Dondero and -- excuse me, on behalf of Hunter  
18 Mountain, and hopefully on behalf of the Reorganized Debtor  
19 and the Claimant Trust.

20 And so when we hear Mr. Dondero, it's an attempt to  
21 distract the Court. And what we need to do is just take a  
22 step back, not have distractions, look at the complaint, and  
23 under a 12(b)(6) standard, which is the appropriate standard  
24 at most, I think the Court will find that we have stated far  
25 more than a colorable claim.

1 I will also point out that Mr. Morris has not identified  
2 one single case suggesting or supporting his position. Not  
3 one single case. And counsel for Mr. Seery has really not  
4 addressed the *Louisiana* case that we've identified in an  
5 effective way.

6 THE COURT: He said -- he said --

7 MR. MCENTIRE: If he wants additional --

8 THE COURT: He said that was in a pre-confirmation  
9 context, and he pointed out the recent *Foster* case. What is  
10 your response to the recent *Foster* case?

11 MR. MCENTIRE: The issue here is colorability. And I  
12 don't have the recent *Foster* case before me. The issue is  
13 colorability. There's nothing in the Court's gatekeeping  
14 protocols in the plan that changes the standard. The standard  
15 is the same as the Fifth Circuit has articulated, and that is  
16 to -- that it's not a fruitless claim, --

17 THE COURT: But the question is, --

18 MR. MCENTIRE: -- that there's some evidence.

19 THE COURT: The question is whether the hearing that  
20 is required by the plan -- which said the Bankruptcy Court,  
21 after notice and a hearing, will determine whether an action  
22 should go forward -- whether the hearing contemplates  
23 evidence. Does the Court need to hear evidence? And to me,  
24 that partly turns on what my legal standard is.

25 In *Foster Mortgage*, --

1 MR. MCENTIRE: Yes.

2 THE COURT: -- the court heard evidence. And it was  
3 a *Barton* motion, which, as I identified, I think is a pretty  
4 darn analogous situation.

5 And I'll just let you know, my law clerk found a case from  
6 the Third Circuit, *Barton Creek*, where they considered  
7 evidence. *Vistacare Group*, 678 F.3d 218 (3rd Cir. 2012).

8 So, again, I am just here to figure out what kind of  
9 hearing we set. And maybe --

10 MR. MCENTIRE: That --

11 THE COURT: Maybe it's just -- maybe it's premature.  
12 Maybe I can't make that decision today because I have  
13 apparently very different views on whether evidence is  
14 appropriate and what my legal standard is. Maybe we need to  
15 just hear the briefing --

16 MR. MCENTIRE: We will take a look at the *Foster*  
17 case, Your Honor. And, as appropriate, I will -- we'll  
18 provide counsel our views on that. He's raised the issue, and  
19 we would like to be able to respond.

20 With regard to the schedule, I would suggest to the Court  
21 that the schedule as it exists is appropriate and sufficient  
22 because there's more than 24 or 25 days to respond to this  
23 pleading. And -- number one. Number two, regardless of how  
24 Mr. Morris liked to characterize the redline or the blackline  
25 or whatever-line, the bottom line is the pleading has actually

1 been streamlined. We've actually dropped a claim. We dropped  
2 one of the causes of action. And what has been included --

3 THE COURT: Which one was dropped?

4 MR. MCENTIRE: -- is the fraud that --

5 THE COURT: Which one was dropped?

6 MR. MCENTIRE: Fraud. We dropped fraud. We  
7 reorganized the pleading with a very large introductory  
8 section. And so what appears to be a lot of redline is a lot  
9 of just procedural reorientation of the pleading.

10 And the other thing I would point out, we have asserted a  
11 fraudulent concealment discovery rule allegation, and we have  
12 enhanced our conflict allegations against Mr. Seery.

13 We have also taken advantage of the financial data that  
14 just came out last week and incorporated some of that.

15 So a lot of this has occurred and a lot of our changes to  
16 the pleading have occurred or additions have occurred since  
17 the filing of the original motion. And so we don't believe  
18 there's -- the substantive nature of our allegations have not  
19 changed. We have added one or two additional declaratory  
20 judgment actions, and that's it.

21 And so setting aside attempts to mischaracterize  
22 expediently what may or may not be, I simply ask the Court to  
23 look at what's before it and to try to kind of pierce through  
24 the argument and perhaps a misdirection. Because, very  
25 clearly, the case has actually been lessened and is more

1 streamlined than anything.

2 With that, Your Honor, I would simply go back and say  
3 this. I don't believe we need to extend the briefing deadline  
4 any further. Mr. Dondero is not necessary for this Court's  
5 inquiry to determine what the appropriate standard is and  
6 whether evidence is required. We believe we are correct. We  
7 will brief the *Foster* case and take a look at it since counsel  
8 has raised it.

9 And I would, again, underscore the fact that Mr. Morris  
10 came in here today, talked for 30 minutes, and didn't offer  
11 the Court one single case citation.

12 Thank you.

13 THE COURT: All right. Well, he did start out by  
14 saying he didn't think we were going to discuss legal  
15 authority today.

16 MR. STANCIL: Your Honor, I don't want to reopen the  
17 wound, but if Your Honor wants cases, I've got -- I think I'm  
18 -- I have nine I could cite at the moment for the standard of  
19 review under *Barton*. It is not a 12(b)(6) standard. I assume  
20 Your Honor will ask if she wants those today or just wants to  
21 get those in our brief.

22 THE COURT: I want to --

23 MR. STANCIL: But I would hate for the record --

24 THE COURT: I want to get briefs. And in thinking  
25 through what kind of mini-scheduling order we're going to

1 have, I'm going to think out loud a bit. I will just tell  
2 you, I feel like this is -- deciding what is a colorable  
3 claim, I just strongly am inclined to think it's a mixed  
4 question of fact and law. Okay? And I am strongly inclined  
5 to think the Court's best guidance is from the *Barton Doctrine*  
6 cases.

7 And, again, I remember that *Foster* case from January.  
8 It's been three months since I've read it and I can't remember  
9 if they talked about legal standard or what kind of hearing  
10 you have to any great extent. But I do know the Court in Fort  
11 Worth heard evidence on that.

12 And, again, this Third Circuit case, *Vistacare* -- hang on.  
13 The court, just in Footnote 12, the Third Circuit points out  
14 evidence was presented and considered.

15 So I tend to think those are the most analogous cases, the  
16 *Barton Doctrine* cases. So I am going to allow briefing on (a)  
17 is it appropriate for the Court to hear evidence, and (b) any  
18 authority you can find regarding what is the appropriate legal  
19 standard. Colorable. I mean, those are actually closely  
20 overlapping issues, right? I guess they're one and the same,  
21 right? Because plausible, Rule 12(b)(6), you usually stick  
22 within the four corners of the documents, although you can  
23 take judicial notice of pleadings and the record in the case.  
24 But it looks like most of these *Barton Doctrine* cases have  
25 allowed evidence, suggesting it's at least a different

1 standard than 12(b)(6).

2 So I'm going to allow briefing on that, and we're going to  
3 talk about dates. But I'm just, I'm trying to decide -- and  
4 maybe I should get your comments on this, actually -- should  
5 we have legal briefing on other issues besides just what does  
6 the colorability standard entail.

7 Because here are a couple of things that just kind of make  
8 me wonder, do we need an evidentiary hearing or not? Do we  
9 have a legal question here about is all of this -- is this  
10 complaint, the claims in the complaint, would these be  
11 administrative expense claims that should have been asserted a  
12 long time ago? Does anyone want to talk about that? I mean,  
13 maybe I'm getting way ahead of myself. But the whole idea of  
14 Hunter Mountain is bringing these derivatively on behalf of  
15 the Reorganized Debtor. Well, maybe that negates my theory.  
16 I don't know. But I just think is this something -- maybe I'm  
17 all off. Maybe you all have thought about this a little more.

18 MR. MORRIS: Your Honor, yeah, if I may.

19 THE COURT: Okay.

20 MR. MORRIS: Number one, I hope whatever schedule the  
21 Court decides upon, that we stick to the schedule and that we  
22 don't have random briefs getting filed.

23 At this point, Your Honor, whether it's May 4th or May  
24 11th, I think the objecting parties are going to address the  
25 two issues that you've identified, whether or not this should

1 be an evidentiary hearing and the standard of colorability.  
2 I'm also quite confident that other legal issues will be  
3 addressed, including whether or not Hunter Mountain has a  
4 legal right to even assert a derivative claim, whether or not  
5 duties are owed that would support some of these causes of  
6 action.

7 So there are other legal issues that we plan to address.  
8 But I would respectfully request that, whether it's May 4th or  
9 May 11th, you allow the objecting parties to file their  
10 papers, and then whether it's May 11th or May 18th, Hunter  
11 Mountain gets one and only one chance to respond in their  
12 reply. That's what the scheduling order is intended to do.

13 And I heard Mr. McEntire refer to yet another so-called  
14 supplement, and I don't want to chase a new brief every two  
15 days. That's not the way the process --

16 THE COURT: Well, --

17 MR. MORRIS: -- is intended to work.

18 THE COURT: -- absolutely. We're going to have --

19 MR. MORRIS: And -- and --

20 THE COURT: -- a firm scheduling order. But what I  
21 was thinking out loud about was would I hear or consider,  
22 entertain briefing on any subject besides the legal standard  
23 and do we have evidence. Because there are a couple legal  
24 issues out there swirling around. I don't know if my  
25 administrative expense argument/concern even makes sense,

1 because I'm not sure who's saying who was harmed here. But  
2 maybe it just doesn't make sense.

3 But another thing swirling around is do we have  
4 essentially complaints about claims trading? Claims trading?  
5 And I don't know if we want to get into that or not, but  
6 claims trading in bankruptcy is a pretty unregulated -- it's  
7 just kind of between the claims trader and the transferee.  
8 And so as far as do we have a colorable claims here, I'm  
9 wondering if there's some legal briefing with regard to the  
10 nature of the claims.

11 Thoughts?

12 MR. MORRIS: Well, --

13 THE COURT: Do we want to keep this solely legal  
14 standard and evidence, or allow briefing of a broader nature?  
15 I'm trying to be clear up front because I don't want one party  
16 giving me a huge brief going into 14 issues if that's not what  
17 --

18 MR. MORRIS: Yeah. And I would only say, Your Honor,  
19 that this motion is, in certain respects, no different than  
20 any other motion. A party files a motion, people are allowed  
21 to object, there's a reply, and there's a hearing. And we  
22 don't want that process to change one bit.

23 We think that there's a legal issue. If any objecting  
24 party believes that there's a legal issue that they feel like  
25 bringing to the Court's attention, it'll be contained in the

1 opposition brief. If Hunter Mountain wants to reply to that,  
2 they may. If they don't, they don't.

3 We have a schedule. You know, we'll just ask you for a  
4 one-week adjustment to take into account the latest pleadings  
5 that have been filed. But otherwise, this is a motion,  
6 there's an opposition, there's a reply, and there's a hearing.  
7 And we really would prefer to just keep it that way.

8 MR. MCENTIRE: Well, I agree with Mr. Morris, Judge,  
9 at least on the issue of the sequencing of the objection and  
10 the reply.

11 We still believe that May 4th is an appropriate date and  
12 we ought to keep the original schedule as they requested  
13 because of the nature of the pleadings that are before the  
14 Court, as I mentioned.

15 THE COURT: All right. Well, I've been scrolling  
16 through the redline. I see a lot of red. I know you say some  
17 of it's just rearranged, but I see a lot of red. So I think  
18 their request for a little more time is appropriate.

19 So, May 11th for objections and any briefs in support of  
20 objections. May 18th for a reply of Hunter Mountain and any  
21 briefing in support of the reply. And then a hearing May 25th  
22 or thereafter. Speak up, anyone who disagrees with this  
23 scheduling.

24 MR. MCENTIRE: Our statement, I just note it for the  
25 record, Your Honor.

1           So, with regard to the evidentiary issue, obviously, if  
2 the Court determines that it's going to be an evidentiary  
3 hearing, which we object to and oppose, I would reserve the  
4 opportunity to revisit the issue of withdrawing Mr. Dondero's  
5 declarations.

6           I will tell the Court, we're prepared to do so if this is  
7 not an evidentiary hearing, and we do not believe it should be  
8 an evidentiary hearing.

9           THE COURT: All right.

10          MR. MCENTIRE: I believe -- I think my position --

11          THE COURT: Wait. I'm hearing argument again. Right  
12 now, I'm just talking about dates.

13          MR. MCENTIRE: Understood.

14          THE COURT: And May 25th or as soon thereafter as you  
15 can be heard. Any opposition to that? I mean, basically, I'm  
16 just asking you to speak up, Mr. Morris's suggestion of these  
17 new dates: Anything you want to say about that?

18          MR. MCENTIRE: I do believe that my corporate  
19 representative is going to be unavailable on May 25th, and so  
20 we would ask that we keep the original schedule.

21          MR. MORRIS: Your Honor, I would propose, as an  
22 alternative to the 25th, since the 26th is the Friday before  
23 Memorial Day weekend, either the 30th, the 31st, or June 1st,  
24 with the 31st and the 1st being ideal, so we don't have to  
25 travel on the holiday weekend. I don't know what other folks'

1 schedules look like, but --

2 THE COURT: Okay.

3 MR. MORRIS: -- that seems to make sense to me.

4 THE COURT: What about May 31st or June 1st? And  
5 Traci, please let me know if I'm offering something I can't.

6 THE CLERK: Judge Jernigan, will you be giving a full  
7 day for the hearing? If so, neither one of those dates work.  
8 You could do the day after Memorial Day, May 30th. Or Friday  
9 of that week, May 2nd. I'm sorry, June 2nd.

10 MR. MORRIS: I'd prefer May 30th.

11 THE COURT: All right.

12 MR. MCENTIRE: My corporate representative -- my  
13 corporate representative is not available on May 30th. He's  
14 returning on the 31st from a vacation. And so, under the  
15 circumstances, we would request June 2nd.

16 THE COURT: Anyone have a problem with June 2nd?

17 MR. MORRIS: Can we go -- can we go with May 24th?

18 MR. MCENTIRE: My corporate representative is out the  
19 week from May 21st to May 31st.

20 THE COURT: Okay. Say again.

21 MR. MCENTIRE: I just received an --

22 MR. MORRIS: June 2nd.

23 THE COURT: Wait. Wait, wait, wait, wait. May 21st  
24 through May 31st?

25 MR. MCENTIRE: Yes, ma'am.

1 THE COURT: Okay. I'm just --

2 MR. MCENTIRE: So, under the circumstances, we would  
3 request --

4 THE COURT: I'm just letting you know, I am going to  
5 set aside a whole day. Okay? I don't know positively is it  
6 going to be evidentiary. What I'll do is, after the reply  
7 briefs, shortly after May 18th, I'll notify people you're  
8 going to be allowed to put on evidence or not.

9 But for your planning purposes, based on what I've looked  
10 at right now, again, the *Barton Doctrine* cases by analogy, it  
11 looks like the Court has discretion to hear evidence. Okay?  
12 So if people want to put on evidence, they're entitled to put  
13 on evidence. Okay? You don't have to. Nobody has to. But I  
14 think the Court in its discretion is going to hear it.

15 So I may read the briefs and do research, and if I change  
16 my mind, I'll let you all know May 19th or 20th.

17 All right. So, that being the case, it's difficult,  
18 because we're trying to find a whole day just in case we need  
19 the whole day. You just said your client representative,  
20 which is -- who is your client representative?

21 MR. MCENTIRE: Mr. Patrick.

22 THE COURT: He's gone May 21st through 31st?

23 MR. MCENTIRE: Yes, Your Honor.

24 THE COURT: All right. Did I hear June 2nd did not  
25 work for somebody else?

1 MR. MORRIS: Correct. Yeah, Your Honor. I'll be --  
2 I'll be out of the country beginning the evening of the 2nd,  
3 returning the following Tuesday, so whatever date that is. I  
4 think the 6th. So I'd be prepared to go on the 8th or the 9th  
5 of June.

6 THE COURT: Okay. So, I'm sorry, you're out the 2nd  
7 through 9th? Is that what I heard?

8 MR. MORRIS: The 2nd -- the 2nd through the 6th, but  
9 I wouldn't want to do it on the 7th.

10 THE COURT: Okay. Well, --

11 MR. MORRIS: Or Thursday or Friday, June 8 or 9.

12 THE COURT: Okay. Anyone have a problem with June 8  
13 or 9?

14 MR. MCENTIRE: Your Honor, the 8th is vastly  
15 superior, but I will confess the 9th is a college friend who  
16 will be staying at my house with my wife and kids, and my wife  
17 shouldn't be subjected to having to host him, but -- so if the  
18 8th is available, I will beg for the Court's indulgence. But  
19 I'll be here on the 9th if that's requested.

20 THE COURT: Okay. Everyone good, --

21 MR. MCENTIRE: I might need a note.

22 THE COURT: -- June 8th? Everybody good with that?  
23 Okay. I'm hearing no objection. Traci, am I available?

24 THE CLERK: Yes. You have a Chapter 13 docket that  
25 afternoon, but I am sure we can work something out with Mr.

1 Powers.

2 THE COURT: Okay. So --

3 MR. MCENTIRE: Your Honor? Your Honor, this is  
4 Sawnie McEntire. For the record, I do need to lodge my  
5 objection, but I understand the conflicts. And so, subject to  
6 my objection, we agree to that date.

7 THE COURT: All right. So we'll start 9:30 in the  
8 morning, June 8th. And so I'm going to look for a scheduling  
9 order that uses these revised dates that I think I've heard  
10 you all will live with. May 11th for objections to the motion  
11 for leave, and that will include any briefs in support of the  
12 objections. And then May 18th for Hunter Mountain's reply and  
13 any briefing in the reply that responds to the objections.  
14 And shortly after that my courtroom deputy will let lawyers  
15 know, yes, she's going to hear evidence, or no, she's not  
16 going to have evidence. And the hearing will be June 8th at  
17 9:30 in the morning.

18 Any other housekeeping matters while we are here? I mean,  
19 these are the only pleadings that are going to be allowed.  
20 How about that, among other things, as a housekeeping matter?  
21 Just these pleadings, except, obviously, if we have live  
22 witnesses and evidence on the 8th, you'll be bound by the  
23 Local Rule that says witness and exhibit lists are due three  
24 days before. Anything else that you all can think of?

25 MR. MORRIS: Your Honor, if I may, I greatly

1 appreciate your patience today. But I did want to just  
2 inquire as to the status of the decisions on the SE  
3 Multifamily HCRE matter as well as the motion to dismiss that  
4 was argued back in January. Not because I intentionally or  
5 unintentionally seek to pressure the Court, but I do think  
6 that those decisions will be helpful one way or the other  
7 resolving, you know, or getting some clarity in this case.

8 THE COURT: All right. Well, the next of those two  
9 items that comes out will be the SE Multihousing matter. My  
10 law clerk that's working on that is right over here to my  
11 right. And we think before the end of the week, but we are  
12 juggling lots of things, as you might imagine. So that one is  
13 next, and I'm hesitating to give you a time estimate on the  
14 other one, but it'll be next in the queue. We've had lots of  
15 different adversary proceedings in other cases that we've had  
16 to --

17 MR. MORRIS: Yeah.

18 THE COURT: -- work on. But I think, again, SE is  
19 probably towards the end of this week.

20 MR. MORRIS: All right. We appreciate the guidance,  
21 Your Honor.

22 THE COURT: Okay. She's giving me a thumbs up like  
23 I'm not overpromising. You can't see her from the video.

24 All right. So, everyone clear? I want to say in the  
25 strongest terms that I don't want an avalanche of pleadings.

1 Is everyone a hundred percent clear that we get the objections  
2 with supportive briefing May 11th, reply with supportive  
3 briefing on the 18th, and that's it? That's it. Other than  
4 witness and exhibit lists, --

5 MR. MORRIS: Yes, Your Honor.

6 THE COURT: -- if we have evidence. Everybody clear?  
7 Any questions?

8 MR. MCENTIRE: No, ma'am. Thank you. Thank you for  
9 your time.

10 THE COURT: Okay. Thank you. We are adjourned.

11 THE CLERK: All rise.

12 (Proceedings concluded at 3:12 p.m.)

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CERTIFICATE

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

23 **/s/ Kathy Rehling**

**04/25/2023**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

25

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

4 In Re: ) **Case No. 19-34054-sgj-11**  
5 ) Chapter 11  
6 )  
7 HIGHLAND CAPITAL ) Dallas, Texas  
8 MANAGEMENT, L.P., ) January 24, 2024  
9 ) 9:30 a.m. Docket  
10 Reorganized Debtor. )  
11 ) - HIGHLAND'S MOTION FOR  
12 ) BAD FAITH FINDING [3851]  
13 ) - HIGHLAND'S MOTION TO STAY  
14 ) CONTESTED MATTER [4013]  
15 )  
16 )  
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9 TRANSCRIPT OF PROCEEDINGS  
10 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
11 UNITED STATES BANKRUPTCY JUDGE.

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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   DALLAS, TEXAS - JANUARY 24, 2024 - 9:32 A.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, The Honorable Stacey Jernigan presiding.

5                   THE COURT: Good morning. Please be seated. All  
6 right. We have a video hearing this morning in certain  
7 Highland Capital Management matters. We're not going to do an  
8 appearance roll call because we've started a new, I think,  
9 more efficient system where we just have people log in their  
10 appearance when they come onto the video WebEx. And so we're  
11 going to rely on that.

12                  All right. So we have two matters. One has been long-  
13 scheduled. It's Highland's motion for a bad faith finding and  
14 attorneys' fees against NexPoint Real Estate Partners in  
15 connection with proof of claim litigation. So we have that  
16 set.

17                  And then we had an expedited motion to stay a contested  
18 matter set by Highland. Highland is wanting to stay any  
19 litigation on a newly-filed motion by Hunter Mountain  
20 Investment Trust to sue Mr. Seery in the Delaware Chancery  
21 Court or Delaware state court system.

22                  I'm thinking it probably makes sense to consider that  
23 expedited motion for a stay first. Does anyone on the line  
24 disagree with that sequence?

25                  MR. MORRIS: Your Honor, this is John Morris from

1 Pachulski for Highland. I don't disagree with it. I was  
2 prepared to handle the other matter first, simply because it  
3 was filed first, but I defer to the Court if that's the  
4 Court's wishes.

5 THE COURT: Well, I'm just thinking it's probably the  
6 shorter matter and there may be folks who will drop off, I  
7 don't know, maybe.

8 MR. MORRIS: Oh. Then that makes sense.

9 THE COURT: Okay. All right. Well, I'll hear what  
10 Highland wants to say first, please.

11 MR. MORRIS: Okay. Good morning, Your Honor. Before  
12 I get to that, just a couple of housekeeping matters. I don't  
13 mean to be the policeperson here, but there are, at least  
14 showing on my screen, a number of participants just by phone  
15 number. There's somebody who's identified as Participant. It  
16 may be that the Court has the information as to the identity  
17 of these folks, but I thought the purpose was to disclose the  
18 identity of anybody who's attending this hearing.

19 So I see, for example, phone numbers beginning with 202 or  
20 312. There's somebody who's listed, at least on my screen, as  
21 "Participant." I don't think that was the intent of the rule.  
22 And, again, I don't mean to be the policeperson here.  
23 Somebody just joined with a telephone number beginning 469.

24 If I'm mistaken, you know, please just correct me, but I  
25 thought the idea was that there would be transparency as to

1 who was here.

2 THE COURT: Okay. The idea is, because of national  
3 rules at the Administrative Office of the Courts, post-  
4 September 21, 2023, because of so-called anti-broadcasting  
5 rules, if you're a participant in the case you may watch by  
6 video a court proceeding, but if you're not a participant you  
7 can only listen in, audio.

8 So it may be that those that you're seeing is just, you  
9 know, they may have chosen to use the term Participant, but  
10 they may be only audio. Of course, it seems less --

11 MR. MORRIS: Okay.

12 THE COURT: -- significant when we don't have human  
13 beings taking the witness stand in the courtroom.

14 So, Mike, can you answer, are the anonymous people, are  
15 they all audio?

16 THE CLERK: No. They're not. Not -- excuse me. Let  
17 me do this, Judge.

18 Okay. Anyone with a number, you need to identify yourself  
19 for the Court. I see a 202, a 312, and a 469 and 703. If you  
20 cannot identify yourself, we will have to expel you from the  
21 hearing.

22 THE COURT: And, again, --

23 (Inaudible interruption.)

24 THE COURT: Again, if you aren't identified, you're  
25 going to be expelled from the WebEx. You can always call in,

1 audio, but you -- not my rule. A rule from Washington, DC.  
2 So, does anyone at this point want to identify themselves?

3 (No response.)

4 THE COURT: Okay. Hearing no identification, they'll  
5 be expelled. And then, again, if they want to call in, they  
6 can call in, but no video WebEx.

7 All right. Any other housekeeping matters?

8 MR. MORRIS: Just one other, Your Honor. It's with  
9 some very mixed feelings that I report to the Court that our  
10 star paralegal, Aja Cantey, has left us. She has moved on to  
11 become the head bankruptcy paralegal at Paul Weiss. You know  
12 how much I rely on my paralegals. But my sadness has been  
13 assuaged a bit by Andrea Bates, who joined us recently. She  
14 is on the line today. She'll be assisting me in today's  
15 hearing.

16 I just wanted to, you know, let the Court knows that there  
17 has been a change, that we have supreme confidence in Ms.  
18 Bates, who joins us from Skadden Arps.

19 THE COURT: Okay.

20 MR. MORRIS: And I just -- I just didn't want there  
21 to be any surprises there.

22 THE COURT: All right. Thank you for announcing  
23 that.

24 MR. SANJANA: Your Honor, I'm sorry to interrupt.  
25 Your Honor?

1 THE COURT: Yes?

2 MR. SANJANA: I'm sorry to interrupt.

3 THE COURT: Who is this?

4 MR. SANJANA: Hi. This is Jason Sanjana at Reorg --  
5 this is Jason Sanjana at Reorg Research. I was the 202  
6 number. And I just wanted to -- I was always on audio, and  
7 I'm on audio now.

8 THE COURT: Okay.

9 MR. SANJANA: But I was on mute until now. So, --

10 THE COURT: Okay.

11 MR. SANJANA: -- I just wanted to let you know that.

12 THE COURT: Okay.

13 MR. SANJANA: But it may have been appearing as on  
14 WebEx for you, but it isn't.

15 THE COURT: Okay. All right. I appreciate you  
16 clarifying that for us, Jason.

17 Okay. Anything else?

18 MR. MORRIS: No, Your Honor.

19 THE COURT: All right. Well, we had this motion to  
20 stay the contested matter of Hunter Mountain wanting relief  
21 from the gatekeeper provision to sue Mr. Seery in Delaware.  
22 So I'll hear what Highland has to say with regard to its  
23 motion for a stay.

24 MR. MORRIS: Okay. Thank you, Your Honor. John  
25 Morris; Pachulski Stang Ziehl & Jones; for Highland Capital

1 Management. We're here today on Highland's motion for a very  
2 limited stay of Hunter Mountain's motion for leave to sue Mr.  
3 Seery.

4 I have a short deck to use to assist in today's  
5 presentation, and I would ask Ms. Bates to put that up on the  
6 screen.

7 While we're waiting for that, just so it's clear, the  
8 motion was originally filed at Docket No. 4013.

9 THE COURT: Okay.

10 MR. MORRIS: And, you know, as an overarching theme  
11 here, the basis for the stay is that the issues in the motion  
12 for leave pertaining to whether or not Hunter Mountain is a  
13 beneficiary under the Claimant Trust Agreement are the very  
14 issues that are going to be -- that have been fully briefed  
15 and that are going to be argued just three weeks from now in  
16 connection with Highland's motion to dismiss Hunter Mountain's  
17 valuation complaint.

18 And I think that the easiest thing to do here, Your Honor,  
19 if we can -- if we could go to the next slide, is just to  
20 think about what's -- what the pleadings are. What's the  
21 relief that is being requested and what's the basis for the  
22 relief?

23 And so you'll see -- and this is in our motion -- but I  
24 find it helpful to actually focus on exactly what the  
25 complaint is. The complaint that we're seeking to stay

1 includes four or five causes of action. You'll find up on the  
2 screen Paragraph 35 of the proposed complaint. It follows the  
3 heading Roman Numeral V, Causes of Action. And this is the  
4 basis for the complaint. It's solely relying on Delaware  
5 corporate law, Section 3327 of the Delaware corporate law.  
6 And that law allows, you know, certain people the ability to  
7 seek the removal of the Trustee.

8 As set forth in Hunter Mountain's own pleading, under  
9 Section 3327, relief can be sought only if it's in accordance  
10 with the governing instrument, and Hunter Mountain is not  
11 making that claim here, or by a trustor, another officeholder,  
12 or a beneficiary. There's no contention that Hunter Mountain  
13 is a trustor, there's no contention that it's a court, there's  
14 no contention that it's another officeholder.

15 Therefore, under Hunter Mountain's complaint that they  
16 seek to file to remove Mr. Seery, they must be a beneficiary.  
17 This Court must determine that Hunter Mountain is a  
18 beneficiary. That's what their complaint says, and there  
19 really can't be any dispute about that because each of the  
20 causes of action uses the very highlighted language that  
21 follows from the statute that they're relying upon.

22 And let's compare that with Hunter Mountain's motion --  
23 complaint for valuation information. So if we can go to the  
24 next slide. They have three causes of action in that lawsuit,  
25 and every one of those causes of action also requires a

1 determination that Hunter Mountain is a beneficiary under the  
2 Claimant Trust Agreement.

3 The first cause of action can be found in Paragraphs 82 to  
4 88, and it demands disclosure of trust assets and an  
5 accounting. They claim that they need the information, quote,  
6 to determine whether their claimant -- contingent Claimant  
7 Trust interests may vest into Claimant Trust interests.

8 You know, for me, Your Honor, that's already a --  
9 shouldn't they know they're not beneficiaries? They have  
10 already conceded in Paragraph 83 that they are not holders of  
11 Claimant Trust interests but merely have unvested contingent  
12 Claimant Trust interests.

13 But beyond that, as the Court knows from prior litigation,  
14 only Claimant Trust beneficiaries have rights to obtain  
15 information, and those rights are severely limited.

16 So you have a concession that Hunter Mountain is not a  
17 Claimant Trust beneficiary. You have a document that's been  
18 adopted by this Court, approved by this Court, approved by the  
19 Fifth Circuit Court of Appeals, that expressly gives only  
20 Claimant Trust beneficiaries very limited information rights.  
21 And Hunter Mountain here seeks to ignore all of that.

22 They don't care that they're not a Claimant Trust  
23 beneficiary. They don't care that they're seeking more than  
24 even Claimant Trust beneficiaries are entitled to. They don't  
25 care that they're seeking information that they have no right

1 to receive.

2 But the whole premise of Count One is dependent on whether  
3 they're a Claimant Trust beneficiary, which is the exact same  
4 issue that has to be decided in the motion to remove Mr.  
5 Seery.

6 The second cause of action is for declaratory judgment on  
7 the value of the trust assets. That can be found in  
8 Paragraphs 89 to 92. And, you know, these are their words.  
9 This isn't my -- these aren't my words. This isn't argument.  
10 This is just asking the Court to read Hunter Mountain's own  
11 pleading. And it depends -- the second cause of action  
12 depends on whether the Defendants have been compelled to  
13 provide the information about the Claimant Trust assets. The  
14 Court can't make a declaratory judgment unless Highland has  
15 been compelled to provide the information. But for the  
16 reasons I just discussed, Highland can't be compelled to  
17 provide any information to Hunter Mountain or Dugaboy because  
18 they're not Claimant Trust beneficiaries.

19 For the same reasons, the third cause of action, which  
20 seeks declaratory judgment regarding the nature of the  
21 Plaintiffs' interests, you know, there's a whole host of  
22 reasons why these causes of action are deficient and why the  
23 motion to dismiss ought to be granted, but I'll save that for  
24 February 14th. The point now is that, just like the second  
25 cause of action, they seek a determination that the Claimant

1 Trust interests are likely to vest, an advisory opinion if  
2 I've ever heard of one. But be that as it may, it -- still,  
3 it's an acknowledgement that they're not Claimant Trust  
4 beneficiaries.

5 And so, in both cases, in both lawsuits, the central  
6 question is, is Hunter Mountain a Claimant Trust beneficiary?

7 If we can go to the next slide, let's look at the  
8 briefing, because there's really no dispute about this.  
9 There's no dispute about it at all. Look at Highland's motion  
10 to dismiss the valuation complaint. Right up in Paragraph 2,  
11 we say explicitly: Despite holding only unvested contingent  
12 trust interests with no rights in the Claimant Trust,  
13 Plaintiffs stubbornly seek financial information regarding  
14 Claimant Trust assets. This is the basis for the motion to  
15 dismiss, that they're not Claimant Trust beneficiaries.

16 And it's not as if this is the only place in the pleading  
17 where this is discussed. If you go to Docket No. 14 in this  
18 adversary proceeding, as you can see in the footnote, there's  
19 an extensive analysis that explains why Plaintiffs have no  
20 rights to financial information, precisely because they're not  
21 Claimant Trust beneficiaries.

22 And it's not as if Hunter Mountain says we're wrong, it's  
23 not an issue. They know it's an issue, and they go to great  
24 lengths to address it.

25 If we can go to the next slide. This is from their

1 opposition to the motion to dismiss. In Paragraph 10, they  
2 say the Claimant Trust Agreement evidences an intent that  
3 Plaintiffs become Claimant Trust beneficiaries when Claimant  
4 Trust assets are sufficient to pay all lower-ranked claims in  
5 full, with interest. Again, their pleading, not mine. And it  
6 shows that they understand the hurdle they have to come --

7 Now, there's lots of other stuff in these pleadings  
8 regarding other theories for why these claims fail, but all of  
9 them fail if they're not a Claimant Trust beneficiary.

10 And I'd ask the Court to pay particular attention to  
11 Paragraphs 40 to 52 in Hunter Mountain's pleading in  
12 opposition to the motion to dismiss. As you can see in the  
13 footnote, they have an extensive legal argument as to why  
14 Plaintiffs are allegedly -- why Plaintiffs allegedly, quote,  
15 have a legal right to obtain the information they seek.  
16 That's the same issue that's got to be decided in the motion  
17 for leave to sue Mr. Seery.

18 And what's really interesting, Your Honor, is not only do  
19 they make the argument in opposition to the motion to dismiss,  
20 they basically cut-and-pasted -- I credit Mr. Demo for helping  
21 me out; he pointed this out to me this morning, so I want to  
22 give credit where credit is due -- they cut-and-pasted the  
23 exact same argument in their motion for leave to sue Mr.  
24 Seery. So if you just compare Paragraphs 41 to 46 of Hunter  
25 Mountain's opposition to Highland's motion to dismiss the

1 valuation complaint to Paragraphs 31 to 37 of Hunter  
2 Mountain's motion for leave to sue Mr. Seery, you'll see  
3 they're making the exact same argument as to why they contend  
4 they're a Claimant Trust beneficiary.

5       Again, don't take our word for it. This isn't argument.  
6 This is just looking at their own pleading. Right? They're  
7 saying in both cases they're Claimant Trust beneficiaries.  
8 They're fighting it, right? They know they have to get over  
9 that hurdle, because if they don't they can't pursue these  
10 claims.

11       If we can go to the next slide. You've got Highland's  
12 reply. Again, extensive discussion. It's the very first  
13 point in the very first paragraph, under the Trust Act,  
14 whether a party is a beneficiary: Here, a Claimant Trust  
15 beneficiary is determined by the plain language of the  
16 governing trust -- here, the Claimant Trust Agreement.

17       And, again, if you take a look at the footnote, our reply  
18 in Paragraphs 5 through 9 provides further argument as to why  
19 Plaintiffs are not beneficiaries of the Claimant Trust under  
20 the plan, the Claimant Trust Agreement, or under applicable  
21 law.

22       So I think it's pretty clear from the pleadings, it's  
23 pretty clear from the parties' positions, it's pretty clear  
24 from the Delaware law that Hunter Mountain relies upon to move  
25 Mr. Seery, Section 3327, that the causes of action in that

1 proposed complaint and the causes of action in Hunter  
2 Mountain's valuation complaint all depend on whether or not  
3 Hunter Mountain is a beneficiary under the plan, under the  
4 Claimant Trust Agreement, and under Delaware law. And all of  
5 those issues are going to be argued in just three weeks. All  
6 of those issues are going to be decided by the Court  
7 thereafter.

8 If we can go to, yeah, this next slide. So, yesterday,  
9 Hunter Mountain filed its response to the motion for a stay.  
10 And I just want to address some of the arguments that were  
11 made.

12 You know, the first argument that they made concerned the  
13 legal standard. They said, oh, Highland didn't use the proper  
14 legal standard. We disagree. This isn't a motion for  
15 injunctive relief. It's not a motion for a stay pending  
16 appeal. It's a motion asking the Court to prudently police  
17 its own docket.

18 And here's, here's the irony, Your Honor. Again, don't  
19 take my word for it. Take Ms. Deitsch-Perez and her clients'  
20 word for it. Because just last year, in connection with their  
21 motion for a stay pending the mediation, in a pleading that  
22 was filed on 4/20, they said that the Court has the discretion  
23 to issue a stay. They relied on *Clinton v. Jones*, exactly as  
24 Highland has done to seek a stay in this case. Okay? So the  
25 very standard and the case citation that they criticize today

1 is the very standard and case citation that they relied upon  
2 last April.

3 And here, it gets even better. Because Ms. Deitsch-Perez,  
4 on behalf of her client, Hunter Mountain, joined in Dugaboy  
5 and Mr. Dondero's motion for a stay. She and her client  
6 personally adopted the very standard that they're criticizing  
7 today. You can't make this stuff up.

8 The standard is the right standard. The Court certainly  
9 has the discretion to police its own docket.

10 The second point that they make is that, you know, they'll  
11 be really prejudiced without a stay. I say it's the exact  
12 opposite. Everybody will be prejudiced without a stay. The  
13 Court will be prejudiced. Highland will be prejudiced. Mr.  
14 Dondero. Hunter Mountain. All of us will be prejudiced  
15 because we will wind up litigating the exact same issue twice.  
16 We will expend further resources. And of greatest concern to  
17 us is that we might wind up with inconsistent results.

18 There's no question that -- I shouldn't say there's no  
19 question. In all likelihood, a decision will be had on  
20 Highland's motion to dismiss the valuation complaint in short  
21 order, since argument is scheduled just three weeks from now  
22 and the matter is fully briefed. And as Your Honor knows,  
23 that -- if we prevail and the Court finds, as it's indicated  
24 in prior rulings, that Hunter Mountain is not a Claimant Trust  
25 beneficiary and has no rights to this information, and they

1 appeal that, that'll get assigned to a particular district  
2 judge.

3 If the stay is denied and we proceed with the litigation  
4 of the Hunter Mountain complaint that seeks to remove Mr.  
5 Seery and we prevail on that one, that'll go to a different  
6 judge, in all likelihood, since there's more than, I think,  
7 two dozen judges in the District Court. They'll be on  
8 completely separate tracks. And you run the -- you run the  
9 real risk -- I mean, actually, it's not a real risk, from our  
10 point, given the substance -- but you definitely run the risk  
11 of inconsistent decisions.

12 So I know, and I'll close in a moment with some comments  
13 about the wisdom of this whole exercise, but I know -- I know  
14 how much Mr. Dondero, you know, wants to challenge Mr. Seery.  
15 But that doesn't -- that doesn't make it the efficient thing  
16 to do. It doesn't make it the fair thing to do, when we're  
17 litigating the exact same issues right now.

18 The third, the third notion, the third argument they make  
19 is really they attempt to rewrite their complaint. They try  
20 to suggest that the issues are not identical. They suggest  
21 that, you know, they've got theories of breach of fiduciary  
22 duty and good faith and fair dealing. You know what, Your  
23 Honor? You just have to go back to Paragraph 35 of the  
24 proposed complaint. That are the legal theories of their  
25 case. And to the extent that there's a notion of fiduciary

1 duty in there, it is predicated on Section 337. In fact, it's  
2 predicated -- if you'll give me just one moment -- it's  
3 predicated on Section 337 -- 3327(1): The officeholder has  
4 committed a breach of trust.

5 It's not a stand -- there is no standalone breach of  
6 fiduciary duty claim, nor could there be. Because as the  
7 Court is likely aware, there's a very specific provision in  
8 the trust agreement that's been affirmed by this Court, the  
9 District Court, the Fifth Circuit, that specifically  
10 disclaimed any fiduciary duty to anybody but a Claimant Trust  
11 beneficiary. So you couldn't have a standalone breach of  
12 fiduciary duty claim. It just doesn't exist.

13 So they can try if they want to characterize their claims  
14 however they want. They should be held to the pleading that  
15 they filed. It's the one that we'll be defending if the  
16 motion for stay is denied or if the Debtor sees the light of  
17 day.

18 But I do want to close with just some general observations  
19 about this. Right? They want to -- they suggest, you know,  
20 Highland wants to avoid the suit to remove Mr. Seery. No, we  
21 don't. What we want to do is the right thing here. There is  
22 no dispute that neither Mr. Dondero, Mr. Patrick, or Hunter  
23 Mountain serve on the Claimant Trust Board. They have no  
24 personal knowledge of anything concerning the Claimant  
25 Oversight Board. And Hunter Mountain's proposed complaint

1 cites no facts concerning the governance of the Claimant  
2 Oversight Board.

3 Instead, they seek to file another complaint, borne out of  
4 grievances, based on rank speculation, untenable inferences,  
5 and fabricated tales, lacking in common sense, frankly, that  
6 is woefully ignorant of the evidence that has already been  
7 admitted against it.

8 According to Hunter Mountain, the Claimant Trust Board is  
9 missing in action. They have abandoned their fiduciary duty.  
10 They have ceded control of the Claimant Trust to Mr. Seery to  
11 do what he wishes, even if it's acting against Stonehill and  
12 Farallon's own interests. Right? The complaint said, oh, Mr.  
13 Seery is arbitrarily withholding distributions so he can  
14 supposedly enrich himself by getting the same salary that this  
15 Court approved it'll be four years ago in July.

16 You can't make this stuff up, Your Honor. The whole  
17 premise doesn't make any sense at all. Why doesn't it make  
18 any sense at all? Because Mr. Dondero [sic] is accountable.  
19 He is fully accountable. He's accountable for the Claimant  
20 Oversight Board and he is accountable to every holder of an  
21 actual vested claimant beneficial interest in the trust. He  
22 owes them fiduciary duties. Hunter Mountain is not in that  
23 group. But Mr. Seery is most definitely accountable to the  
24 people who had allowed claims and the people today who are  
25 Claimant Trust beneficiaries.

1           And here's the thing. Hunter Mountain knows that the  
2 Claimant Oversight Board is not missing in action. Hunter  
3 Mountain knows that Mr. Seery is not acting unilaterally. How  
4 does it know that? Because we had a trial last June. And  
5 during that trial -- you can find this at Docket No. --

6           MS. DEITSCH-PEREZ: Your Honor? I -- Your Honor, I  
7 regret --

8           THE COURT: Stop.

9           MS. DEITSCH-PEREZ: -- interrupting.

10          THE COURT: Okay. What do you want to say, Ms.  
11 Deitsch-Perez?

12          MS. DEITSCH-PEREZ: I regret interrupting Mr. Morris,  
13 but this is not an evidentiary hearing and Mr. Morris is now  
14 testifying to things that are not in his pleadings. It's just  
15 not a fair way to proceed and the Court should not allow it.  
16 Thank you.

17          THE COURT: Okay.

18          MR. MORRIS: If I may, Your Honor, just to --

19          THE COURT: Go ahead.

20          MR. MORRIS: We received a response -- we received a  
21 response yesterday --

22          THE COURT: Uh-huh.

23          MR. MORRIS: -- that accused Highland of filing this  
24 motion for the stay in order to avoid having this heard. I'd  
25 like to -- all I'm doing is responding to the very argument

1 that they made yesterday.

2 THE COURT: Okay. You may respond. I overrule that  
3 objection.

4 MR. MORRIS: Thank you. So, and this is all really  
5 important, because there's evidence in the record at Exhibits  
6 39, 40, and 41 that were admitted last June that show a very  
7 active, responsible Claimant Oversight Board fulfilling their  
8 fiduciary duties in negotiating an incentive compensation  
9 package for Mr. Seery. And they want to file a complaint  
10 that says the Claimant Oversight Board has abandoned its  
11 responsibilities, that they're missing in action.

12 And I want to be really careful here. I want to -- I  
13 want to really be transparent here, frankly. Stonehill and  
14 Farallon are two of the biggest claimholders. They both hold  
15 seats on the board. Does it make any sense at all that they  
16 would allow Mr. Seery to do all this at their own expense if  
17 they didn't think it was justified?

18 This is very important, Your Honor. No one who holds a  
19 valid, vested claim in the Claimant Trust, who is a Claimant  
20 Trust beneficiary, not one of them is complaining about Mr.  
21 Seery's management. Not one of them is complaining about his  
22 decisions concerning reserves. Not one of them is  
23 complaining about whether he has or hasn't made distributions  
24 or how much he's distributing. Not one of them has suggested  
25 to the Court that Mr. Seery is acting unlawfully. Nobody

1 holding a claim, a vested claim in the trust is complaining  
2 about anything. The only person complaining is Mr. Dondero,  
3 the same person who has been the sole source of litigation  
4 since the effective date.

5 He and his counsel should be careful for what they wish  
6 for. If Highland's motion for a stay is denied, Highland  
7 will respond to the motion and will serve another Rule 11  
8 motion, just as it did when Mr. Dondero filed his ridiculous  
9 lawsuit claiming that my firm actually represented him  
10 personally back in 2019. Your Honor may have seen how this  
11 ended. It ended with the withdrawal of that motion. And  
12 this motion will head for the same result.

13 And I say all of this, Your Honor, because I want to be  
14 respectful. I want to make sure everybody's eyes are wide  
15 open. I want to ensure everybody understands that we're not  
16 seeking a stay here because we're afraid of anything. And I  
17 want everybody to know that if the stay is denied or this  
18 motion is ever heard, that the first thing that's going to  
19 happen is there will be a response and a Rule 11 motion,  
20 because it has no basis in law and it has no basis in fact.  
21 Highland seeks a stay not to avoid a hearing on the merits  
22 but because it makes no sense to keep litigating the same  
23 issue over and over again. We are not the same. The stay  
24 should be granted.

25 Thank you, Your Honor.

1 THE COURT: I have two follow-up questions. First,  
2 I think I heard you say February 14th is when the Court --

3 MR. MORRIS: Yes.

4 THE COURT: -- is set to have a hearing on the  
5 motion to dismiss the complaint seeking valuation. Correct?

6 MR. MORRIS: Yes.

7 THE COURT: And --

8 MR. MORRIS: Yes, Your Honor.

9 THE COURT: And your motion for a stay here is  
10 'Please stay hearing this latest Hunter Mountain motion to  
11 file a complaint until not only this Court has ruled on the  
12 February 14th matter but until all levels of appeals have  
13 been exhausted on that.' Am I correct about your request?

14 MR. MORRIS: Yes, Your Honor.

15 THE COURT: Okay. And my second question: When Ms.  
16 Deitsch-Perez started objecting to your argument, I think you  
17 were alluding to a trial this Court had on Hunter Mountain's  
18 motion to sue Farallon and Stonehill as well as Mr. Seery  
19 with regard to what I'll call claims purchasing activity. Is  
20 that what you were alluding to?

21 MR. MORRIS: It was, Your Honor.

22 THE COURT: Okay.

23 MR. MORRIS: And I was alluding to it for the very  
24 singular purpose of pointing out that there was evidence  
25 admitted into the record against Hunter Mountain that shows

1 the Claimant Oversight Board fulfilling its fiduciary duties  
2 and doing exactly what this Court would expect the Claimant  
3 Oversight Board would do.

4 And I point that out only to contrast that evidence,  
5 which has already been admitted, with allegations in the  
6 proposed complaint that somehow the Claimant Oversight Board  
7 has ceded control to Mr. Seery and they're missing in action.  
8 It's just -- they know it's not true. They have the  
9 evidence.

10 THE COURT: Okay. And I said two follow-up  
11 questions, but I actually have this additional question.  
12 This was on my brain, this -- I couldn't remember what month  
13 -- the trial, where I ruled on whether Hunter Mountain should  
14 be granted leave to sue Farallon and Stonehill and Mr. Seery.  
15 This was on my brain because, you know, I've issued a lot of  
16 opinions during the Highland case, but I remembered writing  
17 extensively on whether Hunter Mountain had standing back in  
18 connection with that motion. And in fact, I'm going to hold  
19 it up.

20 MR. MORRIS: Yep.

21 THE COURT: I wrote a 105-page opinion -- which I  
22 don't know if anyone besides my law clerk and I read it,  
23 because it's not entertaining -- but I wrote a 105-page  
24 opinion denying Hunter Mountain -- different lawyer at the  
25 time, not Ms. Deitsch-Perez -- denying Hunter Mountain leave

1 to sue what I'll call the Claims Purchasers -- Farallon,  
2 Stonehill, as well as Mr. Seery. They wanted to sue Mr.  
3 Seery for breach of fiduciary duty. And I had multiple  
4 reasons for denial, but lack of standing was one of those  
5 reasons.

6 And I went and printed the opinion yesterday to refresh  
7 my memory, did I rule on this already? I thought I ruled on  
8 this already. And 23 pages of my 105-page opinion deals with  
9 the lack of standing of Hunter Mountain. Twenty-three pages,  
10 and 85 footnotes, by the way, within that 23 pages, so it's a  
11 very dense 23 pages. I went through constitutional standing  
12 and I went through prudential standing, and I said Hunter  
13 Mountain failed under both tests.

14 So this is a very longwinded question: What I'm hearing  
15 you argue, Mr. Morris, is I'm going to rule one way or  
16 another on February 14th, and then there will likely be  
17 appeals, so let's don't have to reinvent the wheel. But is  
18 there something about my opinion, my 105-page opinion, that  
19 isn't -- I mean, have I already addressed this, or is there  
20 something I missed in that opinion regarding standing? Has  
21 something changed? This was August 2023.

22 So maybe it's not fair to ask you, because this was more  
23 the Claims Purchasers' lawyers' fight, right, and Mr.  
24 Seery's, more than --

25 MR. MORRIS: Right.

1 THE COURT: -- the Reorganized Debtor? They were  
2 the ones who briefed it and argued it. So maybe it's not  
3 something that you bothered to read in detail. But I feel  
4 like I've ruled on this. And --

5 MR. MORRIS: So, --

6 MS. DEITSCH-PEREZ: Your Honor, may --

7 THE COURT: First Mr. Morris, and then I'll let you,  
8 Ms. Deitsch-Perez.

9 MR. MORRIS: So, a couple of observations, Your  
10 Honor.

11 THE COURT: Uh-huh.

12 MR. MORRIS: First of all, I read every word that  
13 Your Honor wrote, --

14 THE COURT: I'm sorry.

15 MR. MORRIS: -- as I do for all judicial.

16 THE COURT: Okay.

17 MR. MORRIS: Yeah, right?

18 Second of all, this issue was addressed by the Court. It  
19 was addressed pretty extensively. It was addressed further,  
20 frankly, on -- there was a subsequent post-trial motion by  
21 Hunter Mountain challenging that very finding --

22 THE COURT: The motion for reconsideration.

23 MR. MORRIS: -- and it challenged that very finding.

24 THE COURT: Uh-huh.

25 MR. MORRIS: That's right. It challenged that very

1 finding based on the same *pro forma* balance sheet that's at  
2 -- that we're saying kind of moots this whole exercise, at  
3 least the valuation proceeding.

4 But I'm sure Your Honor is not aware of it, but Hunter  
5 Mountain has appealed that decision, and they are  
6 challenging, you know, every word, I think, in your order.  
7 Every word in seven interlocutory orders that preceded it.

8 And unlike the resolution of the issue that will be had  
9 on February 14th, where Hunter Mountain's lack of beneficial  
10 ownership in the Claimant Trust is front and center, that  
11 issue is one of a very, very long laundry list of issues that  
12 are going to the District Court. And we have no reason to  
13 believe, we have no -- right? It's one of a million issues,  
14 and there's no certainty at all that the District Court is  
15 ever going to get to that issue. Right? We don't know how  
16 they're going to -- it's just starting now. I don't even  
17 think the opening brief -- I think the opening brief might  
18 have been filed a day or two ago. I'll start looking at that  
19 shortly.

20 But, so that's why we didn't think that was particularly  
21 relevant. We did note that in our footnote. I mean, we did  
22 point out that this -- that, you know, there is an appeal of  
23 the Hunter Mountain decision of last June. But given the  
24 girth of the appeal and the number of matters that are being  
25 adjudicated, you know, I wouldn't -- we're not here saying

1 you should stay the latest Hunter Mountain motion in order to  
2 get a result there, because it doesn't seem, you know, maybe  
3 they address it, maybe they don't. There's no way to say  
4 because it's just not -- it's just buried in there. It's  
5 buried in the laundry list.

6 Another thing I'll say is that you did, you did address  
7 it. You did address it pretty comprehensively. But we have  
8 new pleadings, you know, with arguably some new shades of  
9 argument. But the motion for leave to remove Mr. Seery is  
10 based solely on Section 3327 of the Delaware law, which turns  
11 right back to the terms of the Claimant Trust.

12 I'm sure that we're going to wind up at the same spot,  
13 whether it's through res judicata, collateral estoppel. I  
14 mean, I think we've made a number of these arguments already.  
15 But the point here is, why do we have to litigate these  
16 issues for a third time?

17 THE COURT: Okay. Thank you.

18 All right. Ms. Deitsch-Perez, I'll hear from you.

19 MS. DEITSCH-PEREZ: Okay. And Mr. Aigen is going to  
20 pull up a PowerPoint.

21 Just to -- and go to Slide 2. But just to jump ahead, the  
22 motion for leave is predicated on Delaware Code 3327, and it  
23 has in it a number of criteria for why a trustee should be  
24 removed. The issues are entirely different than in a  
25 valuation proceeding, and a Delaware court may well have a

1 different view of what a beneficiary is for the purpose of  
2 Delaware Code 3327 and the importance of making sure that  
3 Delaware trustees are not hostile or unable to act.

4 I'm also going to jump ahead and answer one of the -- what  
5 Mr. Morris added in his last slide, which was new, claiming  
6 that, oh, no, it's perfectly clear that the Oversight Board is  
7 on the job, so really you, as an equitable matter, you  
8 shouldn't worry about this, because Mr. Seery is supervised.

9 One, that's not in his pleadings. But more importantly,  
10 he's mixing apples and oranges, because the evidence in the  
11 former trial had to do with approving his compensation. The  
12 issue in the motion for leave to bring a suit to remove Mr.  
13 Seery is the fact that the Claimant Trust structurally does  
14 not -- it gives Mr. Seery complete discretion over the issue  
15 of moving money into the indemnity subtrust. It's an entirely  
16 different issue than the issue that was raised in the trial in  
17 June, and Mr. Morris should and probably does know that, and  
18 so has been -- well, his comment was misleading at best.

19 THE COURT: Okay. Different --

20 MS. DEITSCH-PEREZ: But let's take a look at --

21 THE COURT: Different causes of action, different  
22 theories, but still it boils down to whether Hunter Mountain  
23 is a Claimant Trust beneficiary, right?

24 MS. DEITSCH-PEREZ: Or whether it will be treated as  
25 a Claimant Trust beneficiary, --

1 THE COURT: Okay.

2 MS. DEITSCH-PEREZ: -- which is an additional basis.

3 THE COURT: I don't know what that distinction, where  
4 it comes from.

5 MS. DEITSCH-PEREZ: The distinction is that the  
6 parties cannot waive, in Delaware, the duty of good faith and  
7 fair dealing. And so if Mr. Seery is taking actions that  
8 prevent or attempt to prevent the Class 10 and 11 from  
9 becoming beneficiaries, then under Delaware law he would not  
10 be able to raise a lack of that status as a defense under  
11 3327.

12 THE COURT: You're talking about the cause of action  
13 --

14 MS. DEITSCH-PEREZ: And so if --

15 THE COURT: Stop. You're talking about the cause of  
16 action and defenses thereto. We're talking about standing,  
17 which, as I mentioned, 23 pages, 85 footnotes, the last time  
18 Hunter Mountain wanted to sue Mr. Seery and Farallon and  
19 Stonehill. Some of it was constitutional standing, but a few  
20 pages was standing under Delaware law, and I said not a  
21 Claimant Trust beneficiary. Okay?

22 Regardless of what the causes of action and theories are,  
23 Hunter Mountain has to be a Claimant Trust beneficiary.

24 MS. DEITSCH-PEREZ: Or --

25 THE COURT: I've written on that extensively already,

1 and it sounds like I'm going to have to write on it one way or  
2 another extensively after February 14th.

3 Why should we not stay this new motion to file a new  
4 lawsuit, rather than reinvent the wheel again? Maybe it's  
5 going to be different --

6 MS. DEITSCH-PEREZ: Your Honor, --

7 THE COURT: -- with the valuation motion versus what  
8 I wrote in Summer 2023. I don't know. I haven't started  
9 looking at the pleadings in depth. But what is illogical --

10 MS. DEITSCH-PEREZ: Your Honor?

11 THE COURT: -- about this? I mean, this is, again,  
12 it's about judicial resources, efficiency, parties' resources.  
13 Why on earth would --

14 MS. DEITSCH-PEREZ: No, Your Honor, what it --

15 THE COURT: Go ahead.

16 MS. DEITSCH-PEREZ: The reason is there's a reason  
17 that the Supreme Court has a very high standard to stay other  
18 judicial proceedings. So not only must the applicant make a  
19 showing of likelihood of success, but the issue is whether  
20 they will be irreparably harmed by not having a stay and  
21 whether another party would be harmed by having a stay.

22 And here, because Highland seeks to stay this matter for  
23 years, if it turns out in the end that Your Honor's decision  
24 is overturned and Hunter Mountain is found to have standing,  
25 it will be too late to do anything about it if the cases are

1 not allowed to proceed in tandem.

2 Parties have a right to have their cases heard. The fact  
3 that there are similar issues means at some point there may be  
4 res judicata or collateral estoppel that deals with it. But  
5 there's not a rule that only one case can go forward.

6 Under Highland's theory, virtually Hunter Mountain could  
7 not bring any claims, anymore, ever. And that's not the law.  
8 Hunter Mountain is entitled to have this decided.

9 It may well be that Your Honor thinks there's no  
10 difference because of 3327 and is going to rule the same way.  
11 We don't think that that's correct. We think we will convince  
12 you that because Hunter Mountain is moving under 3327, there  
13 is a difference in standing. And in any event, that it should  
14 go to a Delaware court for that determination to be made. But  
15 if Your Honor stays this proceeding, --

16 THE COURT: And by the way, by the way, what does the  
17 Trust Agreement say about where things get litigated?

18 MS. DEITSCH-PEREZ: Delaware law says that you --  
19 that --

20 THE COURT: I asked what the Trust Agreement said.

21 MS. DEITSCH-PEREZ: Delaware law --

22 THE COURT: I asked what the trust agreement said,  
23 because it would trump, right? A contractual agreement would  
24 --

25 MS. DEITSCH-PEREZ: No. That's the -- exactly. It

1 doesn't trump. Under Delaware law, and we cite a case for  
2 this, it's in the brief, a venue provision in an agreement  
3 does not override having matters of Delaware internal affairs  
4 decided in Delaware. So, no, the Trust Agreement does not  
5 automatically override Delaware law.

6 And so this goes back to the *Landis* -- the standard for  
7 stay under *Landis*. Who's harmed? Which harm is irreparable?  
8 Because Highland seeks to stay this matter for years. And  
9 Your Honor knows how long the Fifth -- the District Court and  
10 the Fifth Circuit have been taking to get to rulings. It  
11 could be one, two, two and a half, three, if it goes up to the  
12 Supreme Court. It could be years. And by that time, Mr.  
13 Seery will have continued doing the very things that the  
14 complaint seeks to challenge. That's not fair.

15 I understand there may be a tiny amount of additional  
16 work. Mr. Morris says this is all the same. Well, if it's  
17 all the same, then he's already done the work. And if Your  
18 Honor is convinced it's all the same, well, then you cut-and-  
19 paste the old opinion and put it down and the parties could go  
20 forward with their appeals.

21 The prior standing decision is up on appeal. The parties  
22 are entitled to go forward and have -- and have their judicial  
23 process. There is -- the amount of money Highland spends on  
24 these matters, such as bringing -- bringing the sanctions  
25 claim against Mr. Ellington and then suddenly dropping it in

1 the middle, it defies belief that their -- the real interest  
2 here isn't conserving resources. If in fact these are  
3 duplicative matters, then it will be easy enough to write them  
4 up.

5 And because Highland waited two weeks after the motion to  
6 leave was filed and only a week before its response was due,  
7 is it really credible that it hasn't already largely written  
8 its response? Was it so sure that this Court would do as it  
9 asked that it didn't bother to respond, that it set a hearing  
10 for a date after its response was due? That seems improbable,  
11 Your Honor. I certainly hope that they've gotten this largely  
12 written.

13 But in any event, we've given them -- they asked for and  
14 we've given them an additional week to write up its response  
15 to the motion to leave. I'd ask that the Court allow this to  
16 proceed, because Highland simply doesn't meet the standard,  
17 the very, very high standard for a motion to stay here.

18 THE COURT: All right.

19 MR. MORRIS: If I may, just a few comments, Your  
20 Honor?

21 THE COURT: Very briefly. Two minutes. Because I  
22 thought this was going to be a short matter, and we've been  
23 going --

24 MR. MORRIS: Yeah.

25 THE COURT: -- fifty minutes. Five-oh minutes. So,

1 go ahead.

2 MR. MORRIS: Yeah. Okay. Just, it's not the exact  
3 same thing. It has the exact same legal gating issue: Are  
4 they a beneficiary?

5 If the Court denies the stay -- and I assure the Court, I  
6 haven't written one word of this thing yet -- but if the Court  
7 denies the stay, we are going to be in major litigation. We  
8 reserve the right to take discovery. There will be an  
9 evidentiary hearing, of that I'm absolutely certain, when we  
10 get to that point, as appropriate under the gatekeeping order  
11 that's been adopted by this Court. So it will be expensive,  
12 it will be time-consuming, and it will ultimately yield  
13 absolutely nothing for the Movants here.

14 You know, we didn't set the date for today. Ms. Deitsch-  
15 Perez is exactly wrong about that. The Court set the date for  
16 today. We filed an emergency motion a week ahead of time.  
17 It's not like we waited until the last second. Right?

18 So I just, I take offense with all of that. I take  
19 offense to the reference to the Ellington sanctions motion.  
20 That got resolved because Mr. Ellington finally said he wasn't  
21 going to sue Mr. Seery. Had he done that when we asked him a  
22 hundred times before that, we never would have filed the  
23 motion. He refused to do it. That's why the motion was  
24 filed. And it was resolved -- not withdrawn, but resolved --  
25 only after Mr. Ellington and his lawyer finally said they

1 weren't going to sue Mr. Seery.

2 So, you know, facts matter, Your Honor. Facts are very  
3 important to me. And I want to make sure that the factual  
4 record is a hundred percent accurate.

5 The fact of the matter is, at the end of the day, the  
6 Court should grant the stay. You know, if Hunter Mountain  
7 really wanted Mr. Dondero [sic] out, they should have included  
8 it in their complaint last summer and they shouldn't be  
9 allowed to come up with new claims that aren't even in the  
10 proposed complaint that's on file right now. There is no  
11 claim for breach of the duty of good faith and fair dealing.  
12 There isn't. And so they don't get to come here and argue  
13 against the stay based on a pleading that has yet to be filed.

14 The Court should grant the stay.

15 THE COURT: All right.

16 MS. DEITSCH-PEREZ: Your Honor?

17 THE COURT: No. I'm done. I've heard enough.

18 I am going to grant a stay. It's going to be slightly  
19 different from what is requested here. I'm going to grant a  
20 -- well, I'm going to grant a stay on this newest HMIT motion  
21 to sue Mr. Seery until at least the time I rule on the  
22 valuation motion, the motion to dismiss the valuation  
23 complaint. Okay? So it's argued February 14th. We know how  
24 this case works. I get voluminous submissions. I try to  
25 carefully go through them and make a careful ruling. And so

1 will I get a ruling out in April? That's just a wild guess,  
2 okay, but it's probably a reasonable guess.

3 So what I envision doing is having something like a status  
4 conference/scheduling conference shortly after I rule on the  
5 motion to dismiss the valuation complaint and decide, are we  
6 going to continue the stay to let maybe any appeals -- in  
7 fact, I'll probably set a status/scheduling conference shortly  
8 after the deadline for a notice of appeal. And we'll see, is  
9 there an appeal pending, what's going on big-picture, should I  
10 continue the stay? Okay? So I'm not saying it's going to be  
11 a two- or three-year stay, but I'm saying it's going to be at  
12 least an until-later-this-year stay, and we'll see where  
13 things stand in this case.

14 Now, let me give you a couple of reasons. I don't think  
15 the four-prong TRO standard test applies here: Irreparable  
16 harm; likelihood of success on the merits; balancing the  
17 parties' interests; the public interest. I don't feel the  
18 need to make that evaluation here because I do think this is  
19 just policing the Court's own docket, which of course any  
20 court has the discretion to police its own docket, in the  
21 interest of judicial economy and reducing expense. And so I  
22 am going to elaborate on that and why I'm exercising my  
23 discretion as such.

24 As I've alluded to a couple of times, August 25, 2023,  
25 Docket Entry No. 3903, this Court issued a 105-page opinion in

1 what I would call a very similar context, if not squarely down  
2 the middle of the fairway the same context. And the context,  
3 for the record, was Hunter Mountain, through a different  
4 attorney -- not Ms. Deitsch-Perez, a different attorney --  
5 filed a motion for leave to sue Mr. Seery and Farallon and  
6 Stonehill, Claims Purchasers, for different causes of action.  
7 One of them was breach of fiduciary duty by Mr. Seery, I note,  
8 but there were different causes of action.

9 As I've noted here, and I'm saying this for the record in  
10 case there's an appeal of this order granting stay today, in  
11 the 105-page opinion that I issued denying Hunter Mountain  
12 leave to file the lawsuit against Mr. Seery and the Claims  
13 Purchasers, I did spend 23 pages, dense pages with 85  
14 footnotes, explaining why I thought in that context Hunter  
15 Mountain has no constitutional standing as well as no  
16 prudential standing to sue Mr. Seery and the Claims  
17 Purchasers.

18 I note that the prior lawyer for Hunter Mountain, not Ms.  
19 Deitsch-Perez, gave very little oral argument or written  
20 argument on that. In fact, as I remember, he said, The person  
21 aggrieved standard is what applies and we're a person  
22 aggrieved.

23 And the Fifth Circuit as well as the U.S. Supreme Court  
24 seem to love the topic of standing. Okay? And I thought we  
25 needed a very thorough discussion of standing, okay, because I

1 thought, more likely than not, that's going to be the first  
2 issue -- of course, because it could be bear on subject matter  
3 jurisdiction -- that's going to be the first issue that a  
4 District Court, the Fifth Circuit, even the U.S. Supreme Court  
5 is going to focus on. So, 23 pages, 85 footnotes.

6 Now, there may be more or different things to say when we  
7 have the motion to dismiss on the valuation complaint. Okay?

8 (Echoing.)

9 THE COURT: Please turn off your speakers, whoever  
10 that is.

11 I will note that Delaware law, that would be the narrower  
12 question of prudential standing, right? And in my 23 pages, I  
13 actually spent more time on constitutional standing than  
14 prudential standing. And as Mr. Morris notes, the 105-page  
15 opinion is chock-full of other stuff besides standing. Okay?  
16 Colorability of the claim that Hunter Mountain wanted to bring  
17 and what is the standard the Court should apply under the  
18 gatekeeping provision. Okay? So, lots of other things.

19 Yes, it may be years before a higher court rules or  
20 different courts rule. And it may be slightly nuanced and  
21 different for the valuation thing. But I don't know why  
22 anyone would reasonably think I would go down this trail a  
23 third time for the same party. Okay? I went down it *ad*  
24 *nauseam* August 25, 2023. It sounds like I'm going to go down  
25 it *ad nauseam* again February 14th and thereafter, as I decide

1 what to do.

2 As far as abuse of discretion, I think my bosses -- the  
3 District Court, the Fifth Circuit, the Supreme Court -- would  
4 want to slap my hand if I didn't grant the stay. It's not  
5 just judicial economy to me, it's not just efficiency of the  
6 parties, but it's my bosses. It's the District Court, the  
7 Fifth Circuit. Why are you going to make us look at this yet  
8 again? Okay?

9 Maybe I'll have something different to say. Maybe I'll  
10 have something more to say in connection with the valuation  
11 motion. I don't know. And that's why I'm leaving open the  
12 possibility that we're going to have a status conference after  
13 I've ruled, after notices of appeal may have been filed, and  
14 we'll figure out, do I go forward with this motion for leave?  
15 I'll have a better idea, is there something new and different  
16 at this point?

17 But there is no way any responsible court would go forward  
18 a third time considering Hunter Mountain's standing under  
19 Delaware law, under constitutional law, as a Claimant Trust  
20 beneficiary. Okay? There's no way any reasonable court would  
21 do that, with it twice having been teed up. Okay?

22 So that is the ruling of the Court. We will put it on our  
23 tickler system to set a status conference on whether to  
24 continue a stay in place after I've ruled on the valuation  
25 motion to dismiss.

1 All right. Please upload an order, Mr. Morris, that  
2 reflects that.

3 MR. MORRIS: Okay. And just so there's no ambiguity,  
4 any further briefing on the motion for leave is also  
5 suspended? Is that right?

6 THE COURT: Correct. Yes. Correct. And, again, --

7 MR. MORRIS: All right.

8 THE COURT: -- I just want to say one more thing,  
9 actually, for the record. Not whining to anyone, but it's  
10 going to sound like whining. I checked yesterday, and I'm not  
11 even sure my numbers are perfectly accurate, it may be more  
12 than this, but I counted in the Highland case I have issued 13  
13 -- well, there are 13 published opinions from this Court. And  
14 then if you go back to *Acis*, which was, one might say, a  
15 precursor to Highland, there were five more published  
16 opinions. And that's not even counting Reports and  
17 Recommendations to the District Court, of which there are many  
18 more, probably close to a dozen. And then I've heard -- I've  
19 heard; I've never checked it -- that there were something like  
20 55 appeals. And that was I think about a year ago someone  
21 announced that in court.

22 So, again, I mean, this is not just about the parties,  
23 although I care about the parties and the lawyers. This is  
24 about judicial efficiency. This is overwhelming to the  
25 system, so to speak. Okay? And so, again, I think it would

1 be an abuse of discretion for sure if I didn't grant the  
2 motion to stay.

3 All right. I've said enough. And with that, we'll go on  
4 to Highland's motion for a bad faith finding and attorneys'  
5 fees against I call it HCRE, but I guess it's changed its name  
6 a long time ago to NexPoint Real Estate Partners, LLC. All  
7 right. Mr. Morris, are you presenting that?

8 MR. MORRIS: I am, Your Honor. Thank you very much.  
9 John Morris, Pachulski Stang, for Highland.

10 We're here on this hearing, Your Honor, to argue  
11 Highland's motion for a bad faith finding for an award of  
12 attorneys' fees in connection with the proof of claim and the  
13 prosecution of the proof of claim by HCRE.

14 The motion was originally filed at Docket 3851, and if Ms.  
15 Bates can put up the next deck, I'll walk the Court through  
16 this. This is pretty straightforward.

17 The starting point, the starting point here, Your Honor,  
18 as it ought to be, is HCRE's claim. And if we could just,  
19 yeah, go to this page. What I've put up on the screen here,  
20 or what Ms. Bates has put up on the screen, is a slide that  
21 shows two pieces of evidence, two documents that were admitted  
22 into evidence in this matter. The first is HCRE's proof of  
23 claim, and the second is HCRE's response to Highland's  
24 objection to that proof of claim. And these documents are  
25 critical (chiming) because it sets forth the entire basis for,

1 you know, for this litigation.

2 In the proof of claim, HCRE said, among other things, that  
3 it contends that all or a portion (chiming) of Highland's  
4 interest in an entity called SE Multifamily, quote, does not  
5 belong to the Debtor. Or may be property of (garbled).

6 So this is the proof of claim. They're saying all or a  
7 portion of Highland's interest in SE Multifamily isn't  
8 Highland's. Right? But Your Honor knows that that's just a  
9 statement without regard to how they get there. A proof of  
10 claim -- and this is really simple, and it's why this motion,  
11 I think, is pretty simple -- a proof of claim has to have some  
12 basis in the law. Somebody could have a breach of contract.  
13 Somebody could have a slip and fall. There could be a  
14 personal injury case against the Debtor. There could be a  
15 claim for breach of fiduciary duty or other tortious conduct.  
16 But there's got to be a legal theory on which a claimant is  
17 seeking to recover against the Debtor.

18 And the claimant here, HCRE, set forth those legal  
19 theories in their response. And that's the box that's below  
20 it. And it's based on the very agreement that's at issue, the  
21 Amended and Restated (garbled) LLC Agreement for SE  
22 Multifamily. It says, After reviewing the documentation,  
23 HCRE, quote, believes the organizational documents relating to  
24 SE Multifamily Holdings, LLC improperly allocates the  
25 ownership percentages -- so that's the issue -- of the members

1 thereto due to mutual mistake, lack of consideration, and  
2 failure of consideration. And these are the legal theories.  
3 They claim to reform, rescind, or modify the agreement.

4 Again, not argument, don't accept anything I say, just  
5 accept what HCRE says. These are their pleadings. They told  
6 the Court that they believed that Highland didn't have a right  
7 to its interest in SE Multifamily. They told the Court that  
8 they believed the document improperly allocated the  
9 percentages. They told the Court that Highland provided no  
10 consideration. They told the Court that they had claims for  
11 reformation, to rescind the agreement, or to modify the  
12 agreement. That's the whole basis for this litigation.

13 If we could go to the next slide. Because let's just look  
14 at some very simple terms of the agreement. This is  
15 unambiguous. Right? And this is an agreement that's drafted  
16 by Highland, by HCRE, all under Mr. Dondero's control.  
17 Everybody's rowing in the same direction. The testimony here  
18 was consistent, not only among Highland and HCRE witnesses  
19 but also, and very, very importantly, BH Equities. Right?  
20 We haven't spent a lot of time talking about BH Equities, but  
21 that evidence is in the record. BH Equities testified up,  
22 down, and sideways that the agreement was consistent with its  
23 intent, that it was fully aware that Highland had only put in  
24 \$49,000, that Highland was getting a 46.0 percent interest.  
25 Right?

1 But in addition to BH Equities, Mr. Dondero, and we'll  
2 talk about this more in a moment, and Mr. McGraner testified  
3 to the same thing. And how could they not? Just look at  
4 these provisions. The first box is Schedule A to the  
5 agreement. It says, right, in contrast to the \$291 million  
6 that was credited to HCRE Partners -- they actually didn't  
7 put in any of that; that's what the testimony showed --  
8 Highland actually put in \$49,000. But these are the  
9 percentages that they wrote.

10 And Your Honor will recall that in the 48 hours before  
11 the document was signed -- this is evidence in the record;  
12 I'm sorry I don't have citations to the specific exhibits --  
13 but there's a back-and-forth in emails between Freddy Chang,  
14 I believe it was, and BH Equities about Schedule A and about  
15 the contributions.

16 And so none of this is an accident. And it's not just  
17 stated in Section -- ii Schedule A. It's set forth --  
18 Highland's interest was set forth in Section 1.7, in Section  
19 6.1A, in Section 9.3E, which is the liquidation provision.  
20 Right? This was the waterfall in the event of a liquidation.  
21 So these are the plain, unambiguous, uncontested terms of the  
22 agreement that everybody agreed to when the document was  
23 signed.

24 We can go to the next slide.

25 Despite that, Mr. Dondero swore under the penalty of

1 perjury that the proof of claim was true and correct.  
2 Remember, the proof of claim said that this really wasn't  
3 Highland's interest in SE Multifamily. I don't understand  
4 how he could do that, given the plain terms of the agreement.  
5 But his testimony was short and precise and unambiguous. It  
6 can be found at Pages 55 to 59. It's quoted there -- it's  
7 cited there in the footnote. If you just read those four  
8 pages, Your Honor.

9 And Your Honor cited to this pretty extensively on Pages  
10 4 and 5 of the Court's decision in this matter. I've  
11 summarized just some of the Court's findings. It's not the  
12 Court's findings; it's Mr. Dondero's admissions. He didn't  
13 -- he didn't personally do any due diligence of any kind to  
14 make sure that Exhibit A was truthful and accurate before he  
15 authorized it to be filed. He filed it.

16 He didn't review or provide comments to the proof of  
17 claim or Exhibit A before it was filed. He didn't review the  
18 applicable agreements or any documents before signing the  
19 proof of claim. He had no idea whose -- where the genesis of  
20 the proof of claim was, who at HCRE worked with or who  
21 provided information to Bonds Ellis to allow Bonds Ellis to  
22 prepare the proof of claim. He had no information about what  
23 information was given to Bonds Ellis to formulate the proof  
24 of claim. He didn't know whether Bonds Ellis ever  
25 communicated with anybody the real estate group regarding the

1 proof of claim.

2 He also testified that he never specifically asked  
3 anybody in the real estate group if the proof of claim was  
4 truthful and accurate before he authorized it to be filed.  
5 He didn't check with any member of the real estate group to  
6 see whether or not they believed the proof of claim was  
7 truthful and accurate. He failed to -- he admitted he failed  
8 to do anything to make sure the proof of claim was truthful  
9 and accurate before he authorized his electronic signature to  
10 be affixed and have it filed on behalf of HCRE.

11 That's bad faith, Your Honor. You can't rely on some  
12 vague process or say 'I'm just relying on others,' because if  
13 that's the case, that's what I -- that's we said in our  
14 reply, that's the very important person defense, right? He's  
15 too busy, he just relies on others, he just signs stuff, and  
16 he's got no obligation to do anything. How do you sign  
17 something under the penalty of perjury in that milieu?

18 If the Court doesn't grant our motion here, it will be  
19 sending a signal that people can sign proofs of claim with no  
20 knowledge of the substance of the claim, with no knowledge of  
21 whether the claim is valid, with no knowledge as to whether  
22 or not the Court should take the time to adjudicate a  
23 disputed claim.

24 That's what will happen. Right? That will be the  
25 signal, that very important people are absolved of the

1 responsibility of doing basic due diligence before signing a  
2 proof of claim.

3 I think the signing of the proof of claim, the filing of  
4 the proof of claim, given what we know now, in particular  
5 what we know now, is bad faith.

6 And I know that HCRE in their opposition said, oh, well,  
7 you know, Mr. McGraner did stuff. I would urge the Court to  
8 look at Pages 109 to 112 of the transcript, because Mr.  
9 McGraner kind of distanced himself from the proof of claim.  
10 He said he didn't authorize it, he didn't approve the filing.  
11 He said he never gave any documents to Mr. Sauter. He never  
12 discussed the proof of claim with Mr. Dondero or anybody at  
13 Bonds Ellis. He didn't provide any comments to the proof of  
14 claim. He deferred to counsel. He didn't know if Mr. Sauter  
15 gave any documents to Bonds Ellis. He never gave the  
16 information to Bonds Ellis. He never discussed it with  
17 anybody but D.C. Sauter. Right?

18 So the two people, the only two people who are authorized  
19 to act on behalf of HCRE did absolutely nothing to make sure  
20 that there was at least a modicum of credibility, at least  
21 some basic level of diligence, at least some good-faith basis  
22 to assert that this interest that Highland has in SE  
23 Multifamily could be subject to challenge. Right? They did  
24 nothing.

25 If we can go to the next slide.

1           And then, as Your Honor will recall, they tried to  
2 withdraw the proof of claim. Right? That in and of itself  
3 we contend was an act of bad faith, and it was an act of bad  
4 faith for multiple reasons. There's no dispute that they  
5 tried to -- they filed their motion to withdraw the proof of  
6 claim immediately after taking Highland's depositions but  
7 immediately before I was about to depose their witness. It's  
8 a naked attempt to try to procure a patently unfair  
9 litigation advantage, particularly in light of the fact that  
10 HCRE was simultaneously trying to preserve its claims for  
11 another day.

12           If they had just -- and Your Honor made this point at the  
13 hearing, right? Just say unequivocally you're done with  
14 this. They couldn't do it. They tried to save it for  
15 another day.

16           And so the withdrawal of -- a motion to withdraw the  
17 proof of claim we're not saying is always bad faith. Look at  
18 what I say in the title of this slide. Under these  
19 circumstances, when you file it after taking discovery but  
20 before subjecting your people to discovery, and when you try  
21 to preserve your claims for another day, the Court properly  
22 denied that motion for leave to withdraw the proof of claim.  
23 And it stunk. And Your Honor I think rightly questioned  
24 whether or not this was, you know, a threat to the integrity  
25 of the bankruptcy system and the claims process, whether or

1 not this amounted to gamesmanship.

2 But it didn't end there. In closing argument, HCRE  
3 persisted with its attempt to try to preserve their claim.  
4 This is bad faith. They continued down the exact same path.  
5 They told the Court in closing argument at Pages 180 to 181  
6 of the transcript, quote, They want you to make findings that  
7 we can't raise any of these other issues, decisions, et  
8 cetera, going forward. That's not proper on proofs of claim.  
9 Going forward. They wanted to preserve this issue for the  
10 future.

11 But this issue is their proof of claim. This issue is  
12 based on the legal theory set forth in Paragraph 5 of HCRE's  
13 response to the objection, the response that says they have  
14 claims for rescission, to rescind, to modify the agreement.  
15 Right? That's the whole legal theory of it. But they wanted  
16 Your Honor to simply say the proof of claim is gone but you  
17 all can go pursue another day the legal theories that  
18 underlied the entire process.

19 That's (garbled), Your Honor. That's what this is all  
20 about, the claims process. You have a claim. You have legal  
21 theories on which the claim is based. If your claim is  
22 denied or if the objection to the claim is sustained, done.  
23 They wouldn't have it. It's why the proof of -- it's why the  
24 motion withdraw was denied and why the Court should find that  
25 their attempt to preserve these claims for the future is bad

1 faith.

2 And the interesting thing, Your Honor, is this is  
3 (chiming) one of the very few rulings in the case that Mr.  
4 Dondero didn't appeal. I think even he acknowledges, like,  
5 like, this is just not -- that he didn't -- he didn't want  
6 this seeing the light of day in the District Court.

7 If we can go to the next slide. And this really  
8 amplifies the bad faith in filing the proof of claim. It's  
9 the testimony about the nature of the claim. And again, I --  
10 we talk about this exhaustively in our papers, and so I  
11 haven't cited to everything, but this is just some of the  
12 nuggets from, you know, the testimony that's out there.

13 Right?

14 Consideration. Mr. McGraner testified that Highland  
15 bankrolled HCRE's business. Your Honor can take judicial  
16 notice that Highland loaned millions of dollars to HCRE.  
17 Right? Those are part of the Notes Litigation that HCRE is  
18 now strenuously trying to avoid repaying in its appeal.

19 Right? They're appealing that to the Fifth Circuit and  
20 they're trying -- right? We bankrolled the business, we  
21 shouldn't have our interest, and they don't want to pay the  
22 money back. It really -- this is *chutzpa*, where I'm from.

23 Right?

24 Going on to the question of consideration -- because,  
25 again, this is in Paragraph 5 of the pleading -- there's the

1 admission that HCRE didn't have the financial wherewithal to  
2 close on the Key Bank loan by itself and it needed Highland  
3 to provide capital -- flexibility by co-signing on the loan.  
4 Right? Couldn't have done the deal without Highland, but  
5 they want to take the interest away from us. Bankrolled the  
6 whole project, but they want to take the deal away from us.

7 They include Highland in order to provide tax benefits,  
8 but they want to take the deal away from us. Both Mr.  
9 Dondero and Mr. McGraner were very clear that tax benefits  
10 was one of the reasons Highland was in this. And if Your  
11 Honor will recall, in the closing argument, I pointed Your  
12 Honor to just one of the tax returns that showed something  
13 like \$30-plus million in income was allocated to Highland in  
14 order to shelter it from taxes. Right? I don't know that  
15 there's anything illegal about it. I take no opinion about  
16 it. Right? I have no view on it. But *The Little Engine*  
17 *That Could* that put in the \$49,000 was suddenly stuck with  
18 \$31 million of income. I'll wait to hear an explanation as  
19 to why Highland was included in the deal and whether taxes  
20 were a part of it.

21 Mr. McGraner also testified just --

22 (Audio cuts out.)

23 THE COURT: Okay. What happened?

24 MR. MORRIS: (begins speaking)

25 THE COURT: Okay. Mr. Morris, we lost your sound

1 for about 20 seconds, so if you could kind of repeat the last  
2 20 seconds.

3 MR. MORRIS: Sure. So I'll try and summarize. On  
4 the consideration piece, they know there was consideration.  
5 They pursued a claim based on lack of consideration, but in  
6 the first point there's an admission about Highland having  
7 both bankrolled the whole operation, and in the second point  
8 there's the admission from Mr. McGraner that the deal would  
9 never have gotten done without Highland's financial  
10 wherewithal. And Mr. Dondero and Mr. McGraner admitted that  
11 there were tax benefits. And Your Honor saw those tax  
12 benefits, right? In my closing argument, I pointed to just  
13 one of the tax returns showing that Highland -- I called it  
14 *The Little Engine That Could*, who put in the \$49,000, somehow  
15 got -- somehow got \$31 million of income assigned to it.  
16 Right?

17 This was not an accident. Highland was there for tax  
18 reasons. Again, I take no view as to the propriety of that  
19 at this time, but the notion that there was no consideration  
20 is just -- it was ridiculous then, and their admissions show  
21 that it was ridiculous.

22 The next bullet point shows Mr. McGraner's admissions  
23 that on March 15, 2019, the deadline was approaching to amend  
24 the original LLC agreement to admit BH Equities and to have  
25 it retroactive to the prior August. He admitted that he

1 reviewed the draft Schedule A, which is what we looked at,  
2 right? It showed \$49,000 and a 46.06 percent interest for  
3 Highland. He saw that it unambiguously showed Highland  
4 making a \$49,000 contribution, getting the 46.06 percent  
5 interest. He believed Schedule A reflected his understanding  
6 of the terms between Highland and HCRE, and he knew of no  
7 obligation that Highland had to make any future capital  
8 contributions. I've cited to all of the testimony very  
9 specifically.

10 Mr. McGraner admitted that the allocation of the interest  
11 in Schedule A was consistent with the parties' negotiation of  
12 the waterfall and other provisions in the amended LLC  
13 agreement, that HCRE understood it accurately reflected the  
14 parties' intent.

15 How do you (garbled) proof of claim saying you have to  
16 reform, rescind, modify the agreement, when all of this is in  
17 your head? How do you do that in good faith? They both  
18 admitted that Schedule A reflected the parties' intent at the  
19 time it was signed.

20 It's the last bullet point that's really the head  
21 scratcher. What happened is Mr. Dondero, who also caused  
22 Highland to file for bankruptcy, didn't like the consequences  
23 of his decision. Nothing happened here, as I said in my  
24 closing argument, that doesn't happen in every bankruptcy  
25 case. The assets of the Debtor are marshaled for distribution

1 to the creditors. Highland's interest in HCRE is an asset of  
2 the estate. HCRE challenged Highland's title to that asset.  
3 That's what this litigation is about. And the only reason  
4 they challenged the title is because they didn't like the  
5 consequences of Mr. Dondero's decision to file Highland for  
6 bankruptcy.

7 That's not good faith. If that were good faith, every  
8 equity owner of every business would be able to claw back  
9 everything they'd given to a company, every loan that they'd  
10 given to a company, every -- like, they can't do that. That's  
11 not what the law -- there's no basis for that theory.

12 Finally, just deal with the attorneys' fees issues  
13 quickly. You know, the challenges to our fees are both petty  
14 and baseless, frankly. They said we should have avoided  
15 discovery. I don't know how you say that. We shouldn't have  
16 taken depositions. They took depositions, and we shouldn't  
17 have done that? We should have gone to trial where they had  
18 discovery and we didn't? That doesn't make a lot of sense to  
19 me, and I can't imagine it would make sense to any objective  
20 participant.

21 They claim our legal fees are *per se* excessive. The total  
22 legal fee is less than five percent of the value of Highland's  
23 interest in SE Multifamily, not according to us but according  
24 to Mr. Dondero's family trust, Dugaboy. They told this Court  
25 in -- on June 30, 2022, I think, in the very first motion for

1 information, that Highland's interest in SE Multifamily was  
2 \$20 million. So we spent less than five percent of the value  
3 of that to get good, clean title. I don't think that's  
4 excessive by any means, particularly with the amount of hoops  
5 we were required to jump through.

6 Unidentified timekeepers. They say three people were not  
7 identified. It was a *de minimis* amount of money. We've  
8 addressed that in the brief.

9 Travel time. You know, again, an even more *de minimis* --  
10 I think that's right -- a more *de minimis* amount of money,  
11 less than \$10,000 for me and Ms. Winograd to go to Dallas. We  
12 billed out at half-time. They admit it. And ironically, you  
13 know, our compensation for nonworking travel time was part of  
14 the agreement that was authorized when Mr. Dondero was still  
15 the head of Highland. I don't know how you criticize that  
16 today when it's part of Mr. Dondero's own agreement.

17 Finally, they take issue with Mr. Adler's relatively  
18 modest invoice. I think he charged \$700 an hour. He  
19 (garbled) 30 hours or something in August 2022 as we were  
20 preparing for depositions. Mr. Dondero and Mr. McGraner have  
21 admitted that tax issues were a driving force in including  
22 Highland in this. And if you look at the Amended and Restated  
23 LLC Agreement in the section that comes after Section A, there  
24 is a multipage tax analysis that I can't possibly get my head  
25 around. I'm not a tax lawyer. And we needed some help to

1 understand kind of what the tax implications were.

2 I think, under the circumstances, the need for the tax  
3 services was completely warranted, and the amounts here are  
4 relatively modest to the whole. You know, it's 30-some-odd  
5 hours in connection with depositions at a \$700 hourly rate,  
6 when my firm doesn't provide tax advice.

7 So, you know, Your Honor, I think I'm done. I think  
8 there's multiple reasons for finding the bad faith here. This  
9 proof of claim should never have been filed. You know, if  
10 they wanted to withdraw it, they shouldn't have taken our  
11 depositions and they should have given us a clean bill of  
12 health without trying to reserve some right to bring future  
13 challenges to our title to the asset.

14 And once we got to the trial, it became clear that there's  
15 absolutely no basis for the claim, that through the admissions  
16 there is no question that the document reflected the intent of  
17 parties. Highland provided more than adequate consideration  
18 for its interest. It continues to hold its interest today.  
19 It continues, you know, to receive its allocation of income.  
20 And there's a reason for all of that.

21 And for those reasons, Your Honor, I think the time has  
22 come to start holding people to account here. You know, we  
23 did it, as I mentioned, with the Rule 11 on the motion for  
24 leave to sue us. We were able to get rid of that. I think  
25 the Court really needs to try to bring some discipline to this

1 process instead of allowing people -- instead of allowing Mr.  
2 Dondero and those working at his direction to just file things  
3 irresponsibly, without basis of fact, you know, just -- just  
4 because.

5 It's not a thing. You know, that's not what this Court  
6 ought to be doing. It's not what I ought to be doing. It's  
7 not what I want to be doing, I'll tell you that right now.  
8 And so I think there's a real need for a bad faith finding in  
9 this particular case. I think there's a real need for there  
10 to be consequences of putting the Court and the Reorganized  
11 Debtor through this process. Because this -- if Mr. Dondero  
12 had only searched his own memory, if he had only asked Mr.  
13 McGraner, hey, did the agreement actually reflect the intent  
14 of the parties, how could this ever have gotten filed? That's  
15 all he had to do, was ask himself the question. All he had to  
16 do was ask Mr. McGraner. Right? We wouldn't be here, Your  
17 Honor.

18 And for those reasons, we ask the Court to find that this  
19 whole filing and prosecution of this claim was in bad faith  
20 (chiming), that we should get an award of attorneys' fees.

21 THE COURT: All right.

22 MR. MORRIS: Thank you.

23 THE COURT: A couple of follow-up questions. Thank  
24 you. I think you just answered this question with your  
25 closing comment, that you think there was bad faith in both

1 the filing and the prosecution.

2 So, as I understand it, the filing of the proof of claim  
3 itself you say is bad faith because you say it was a baseless  
4 proof of claim, and it was signed without any due diligence on  
5 the part of the person who signed it, Mr. Dondero? And then  
6 we obviously had months of prosecution, if you will,  
7 litigation, after Highland's objection. And then the timing  
8 of the withdrawal I would say is kind of a third thing I hear  
9 being argued, correct?

10 MR. MORRIS: Yeah. I would just summarize it this  
11 way. The filing of the proof of claim itself was bad faith  
12 for all of the reasons that I've stated. The motion to  
13 withdraw under these circumstances was also bad faith because  
14 they did it after taking discovery and tried to protect their  
15 own witnesses from discovery while trying to preserve the  
16 claims. They wanted to assert them at another day. Counsel  
17 said it in his closing. You know, going forward. That's what  
18 he said. And then the third thing is the substance. There is  
19 no basis to reform the contract. There's, like, there's no  
20 factual basis for the claim itself.

21 THE COURT: Okay. And my last question -- famous  
22 last words, my last question -- if I were to award attorneys'  
23 fees here, I'm looking at sort of a summary page for  
24 Pachulski's fees. I'm looking at Docket 2852-6. I think this  
25 was an Exhibit F to that motion.

1           So, I always use timelines in my life. While HCRE filed  
2 its proof of claim on April 8, 2020, and then Highland  
3 objected to it in an omnibus pleading on July 30, 2020,  
4 Pachulski has started the clock running, so to speak, August  
5 21st. So, to the extent there were fees incurred, looking at  
6 this, after the proof of claim was filed, 2020, thereafter I  
7 note HCRE filed a response to the objection October 19, 2020,  
8 then the move to disqualify Wick Phillips, dah, dah, dah, dah,  
9 dah, April 14, 2021.

10           I had understood you weren't billing time for the  
11 disqualification motion, but in fact it looks like you're only  
12 asking for time starting August 2021, correct?

13           MR. MORRIS: That's right. My intent -- and I think  
14 we started the clock then because that's -- you know, we may  
15 have filed an omnibus objection, I think we did file, and  
16 we're not including time for that. So that's when -- that's  
17 when the fees started to become incurred.

18           THE COURT: Okay.

19           MR. MORRIS: And if I made a mistake anywhere, I  
20 apologize, Your Honor, but the intent was certainly to  
21 include, consistent with Your Honor's prior order, every  
22 minute of time that was expended in connection with the  
23 disqualification motion.

24           THE COURT: Okay. I just --

25           MR. MORRIS: Okay. I'm reminded, actually, I'm

1 actually reminded that August 7th was also the effective date,  
2 so that's probably why we used that date.

3 THE COURT: Okay. Understood. Understood.

4 All right. I think those are all my questions, so I will  
5 hear from HCRE, or NexPoint Real Estate, I think they may  
6 prefer to be called. Who is making the argument there?

7 THE CLERK: He's on mute, Judge.

8 THE COURT: Okay. You're on mute. Is it Mr.  
9 Gameros?

10 THE CLERK: Yes.

11 THE COURT: Okay. Mr. Gameros, you're on mute.

12 MR. GAMEROS: No, I'm not. There we go.

13 THE COURT: Okay. Here we go.

14 MR. GAMEROS: Sorry. Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. GAMEROS: Bill Gameros for NexPoint Real Estate.  
17 I'm going to hopefully show a PowerPoint. Let's see. I just  
18 want to make sure that this is showing. Can everyone see it?

19 THE COURT: Not yet.

20 MR. GAMEROS: All right. Nope. How about that? No.

21 THE COURT: We're not here on our court equipment.

22 Do others -- Mr. Morris, do you see it?

23 MR. MORRIS: I do not, Your Honor.

24 THE COURT: Okay.

25 MR. GAMEROS: Let me try it this way. I'm sorry.

1 THE COURT: We do not -- oops, now something is  
2 starting to happen. Or was. For a --

3 MR. GAMEROS: How about now?

4 THE COURT: Here we go. Oh.

5 MR. GAMEROS: Is it showing now?

6 THE COURT: Oh, here we go. We have it now, yes.

7 MR. GAMEROS: All right. I'm sorry about that, Your  
8 Honor.

9 THE COURT: Okay.

10 MR. GAMEROS: Hate to waste the Court's time.

11 THE COURT: No problem.

12 MR. GAMEROS: All right. We're here in response to  
13 HCMLP's motion for a bad faith finding and attorneys' fees.  
14 First, what are they asking for? Over \$800,000 in fees to  
15 defend a singular proof of claim that had for it as actions  
16 six short depositions, not lengthy, limited written discovery,  
17 and a single-day evidentiary hearing.

18 NREP only has one matter before this Court, the proof of  
19 claim. It has discrete ownership. You've already seen that  
20 from Mr. Morris's slides. BH Equities. Mr. McGraner actually  
21 has a remote interest in it. There are a bunch of folks that  
22 have interests in it, so it's a discrete ownership structure.

23 And it's not a vexatious litigant. It didn't appeal when  
24 the Court denied and overruled the proof of claim. It hasn't  
25 done anything else.

1 It didn't file its claim in bad faith. We're going to go  
2 through that with some detail. It's never conducted itself in  
3 bad faith in front of this Court in any step in the process.

4 But most importantly today, Your Honor, two things.  
5 First, there's not a single case cited in Mr. Morris's slide  
6 deck, and it's -- there's none cited for a very simple reason.  
7 There is no authority regarding fees for an alleged bad faith  
8 proof of claim under 105. We couldn't find it. We looked for  
9 it. It hasn't happened. There's no authority for it. He  
10 hasn't showed you any, and the authorities that he had showed,  
11 there's none in his slide, but we're going to go through them  
12 in detail, Your Honor, there's no basis to award attorneys'  
13 fees.

14 I think intellectually the Court should look at this as a  
15 two-step process. First, is the proof of claim and its  
16 prosecution done in bad faith? I think the answer is going to  
17 be a resounding no. But if the Court thinks there is a bad  
18 faith -- is bad faith activity, the second step is what fees  
19 are possibly awardable.

20 First, it's styled as a bad faith finding. You look at  
21 when the proof of claim was filed and the process that got  
22 there. Your Honor, in our response brief, we provide detailed  
23 citations to the trial transcript that says a variety of  
24 things, including Bonds Ellis never talked to Mr. Dondero,  
25 but, contrary to what Mr. Morris told you this morning, Mr.

1 McGraner did. So there are folks at NREP that were working  
2 with Bonds Ellis when they filed the proof of claim.

3 But he did so, candidly, with one of the best bankruptcy  
4 -- that NREP filed its proof of claim with one of the best  
5 bankruptcy shops in the Metroplex is telling. They wanted to  
6 do it, and they wanted to do it right, and they hired very  
7 competent counsel to do that.

8 These two cases I think are important. It's not just if  
9 there's a mistake in the proof of claim, you don't sanction  
10 them. And just beating the proof of claim. Is not enough if  
11 they lose. Undenied authority. And I think it's telling  
12 here.

13 This Court has seen a lot of litigation on proofs of  
14 claim. Objections to all of them, with a host of settlements.  
15 That just didn't happen here, but that doesn't make those  
16 prior proofs of claim in bad faith, even though they would  
17 like you to think that that's true. It's not true and it's  
18 not fair. It's also not right.

19 How did they do it? First, they hired Bonds Ellis. And  
20 part of that process was Bonds Ellis did the drafting. Mr.  
21 Dondero testified as to how he signed it and the basis on  
22 which he signed it. Because despite all the derision from  
23 HCMLP about the process and not believing in it, the reality  
24 is the process exists, it's what happened, it's what was done,  
25 and they coordinated with counsel in its filing.

1 Just because it's not enforceable, for whatever reason,  
2 doesn't make it sanctionable.

3 What were they trying to accomplish? They did try to  
4 reallocate. They wanted a reallocation because HCMLP only put  
5 in a tiny amount of capital and it wasn't providing any  
6 services.

7 I don't think it's in dispute that the bankruptcy case has  
8 been adversarial. I sat through the prior hour this morning.  
9 Mr. Morris made reference to it during this particular motion  
10 as well. But it also made the amendment impractical. Not in  
11 dispute.

12 Importantly, Your Honor, in your opinion disallowing the  
13 claim and sustaining HCMLP's objection, you didn't find that  
14 it was done in bad faith, and Mr. Morris asked you to do it  
15 several times at trial. Quite frankly, Your Honor, this  
16 ground has been plowed. We don't need to plow it again. The  
17 chance for the bad faith finding was last year. He didn't get  
18 what he wanted, so now he's taking a second swing at this  
19 particular piñata, and it's not right.

20 But look what happened in the reply brief. These are what  
21 are items of bad faith. Bad motive, animus, ill will. That's  
22 *Yorkshire*. That's the surreptitious bankruptcy filing.  
23 *Brown*. First, not bad faith. What happens in *Brown*, of  
24 course, it's a home case, a loan servicer looking to  
25 foreclose. And the sanction itself was tiny. Not \$800,000.

1 It was a small sanction. And this Court, you, Your Honor,  
2 specifically looked at that case in the past.

3 *Page* (phonetic) (garbled). Intentional, deceitful, bad  
4 faith, theft. That is not what happened here. Not even  
5 close.

6 *Lopez*. They don't discuss *Lopez* again. They never  
7 mention it. Why? Because *Lopez* has the 'but for' test in it  
8 for fees. But this case, unlike *Lopez*, which had multiple  
9 motions to compel, had none.

10 Your Honor, this case had one hearing before the  
11 evidentiary trial. A scheduling conference. I'm sorry, it  
12 had two. The motion to withdraw, which we believe should have  
13 been granted. Your Honor didn't grant it. I understand the  
14 Court's ruling. We didn't appeal it. I'm not appealing it  
15 right now. But we did try to withdraw the proof of claim.  
16 But *Lopez* finds bad faith under 105 for discovery abuse. It  
17 doesn't even apply to these facts.

18 So, looking at the Court's inherent powers, it's not a  
19 standard fee application under the Code, that matters, but  
20 most importantly, they've got to provide a causal link for  
21 'but for.' *Lopez* tells you that. *Hagar* in the Supreme Court  
22 tells you that.

23 What happens instead at the motion to withdraw, Mr. Morris  
24 tells you he wants to win on the merits. The difference in a  
25 withdrawn proof of claim and a disallowed proof of claim is

1 zero. There would have been no difference at all. Nothing  
2 has changed. Except for the 'but for' causation analysis on  
3 fees. They spent over \$375,000 to get there.

4 I mentioned it in the reply brief. It's on the slide.  
5 The *Johnson* factors. Completely absent from their reply  
6 brief. They genuflect at it in the initial motion. But me  
7 telling you the *Johnson* factors, Your Honor, is like telling  
8 you the standard for summary judgment. You don't want to hear  
9 it.

10 However, eight out of twelve *Johnson* factors do not favor  
11 this particular fee app. Time and labor required for  
12 everything after the withdrawal. Not required.

13 Novelty and difficulty. It's a proof of claim. It's  
14 neither novel nor difficult.

15 Preclusion of other employment. There's no evidence of  
16 that.

17 The customary fee for work in the community. Candidly,  
18 it's against it. Eight hundred grand for fighting a proof of  
19 claim is pretty stout.

20 Time limitations. There were none.

21 The amount involved and the results obtained. Candidly,  
22 Your Honor, almost twice the fees for the same outcome.

23 Undesirability of the case. No evidence of that.

24 And awards in similar cases. Here, Your Honor, the  
25 absence of 105 cases for proofs of claim, there are no

1 comparable awards. And I think that's important.

2 What is the standard you should be using in assessing  
3 whether to use your 105 powers? Clear and convincing, Your  
4 Honor. Your Honor needs to have a firm belief or conviction  
5 that this was done with malice, ill intent, bad faith, et  
6 cetera. That's not here.

7 Why do you know that? Mr. McGraner had his deposition  
8 taken. He showed up at trial. Mr. Dondero had his  
9 deposition. Showed up at trial. At no instance were they  
10 running away from testifying. Quite the contrary. They came  
11 to court, they answered Mr. Morris's questions, they answered  
12 my questions. If Your Honor had questions, they would have  
13 answered them, too.

14 They took this very seriously. This wasn't some slapdash  
15 proof of claim. They were really trying to get something  
16 accomplished.

17 Fees. Your Honor, this is the fee table. I turned it  
18 sideways. It's in our response to the motion. I think it's  
19 absolutely shocking. The number of hours that were expended  
20 and the fees that were expended, the cumulative total -- this  
21 is just for selected timekeepers, not everybody -- but I'd  
22 point Your Honor to the very bottom, post-motion to withdraw.  
23 If they had just said yes, we'll take the win, they wouldn't  
24 have had to spend \$350,000 for these selected timekeepers,  
25 over \$375,000 with the rest. That is a clear failure of the

1 'but for' test in *Lopez* and the cases that it cites.

2 So, our conclusion, Your Honor. First, the reply doesn't  
3 change anything. They don't give you any new authority or any  
4 basis to award sanctions or bad faith analysis, if for no  
5 other reason than the record is already closed. You've seen  
6 this all before. And when asked repeatedly for a bad faith  
7 finding, you didn't give it to them. No bad faith in the  
8 filing of the claim.

9 The requested fees are reasonable and necessary. Your  
10 Honor, so they flunk the *Johnson* factors. They fail the 'but  
11 for' test.

12 Respectfully, Your Honor, their motion should be denied.  
13 If it's not going to be denied, we would like an opportunity  
14 to file supplemental briefing addressing the new authorities  
15 in the reply brief. Your Honor, I don't think we need to go  
16 there. I think you should deny it outright.

17 Subject to questions from the Court, that concludes my  
18 presentation.

19 THE COURT: All right. A few follow-up questions.  
20 In arguing about the size of the potential fees if I get to  
21 bad faith, you've had a little bit of a theme of: It was just  
22 a proof of claim, it was not difficult, and this was not some  
23 "slapdash proof of claim." So you emphasize not reasonable  
24 fees for addressing the proof of claim, and you also stress  
25 can't find any authority where attorneys' fees have been

1 allowed for having to defend against a proof of claim.

2 Here's what I want you to address. Here is what is going  
3 through my brain here. This wasn't a proof of claim where,  
4 oops, they actually paid our invoice, we're not really owed  
5 this amount, sorry, mistake. It's not a situation where you  
6 filed a \$105,000 proof of claim and in fact only \$97,000 was  
7 due and owing. And I just use those as very common examples  
8 we see in the Bankruptcy Court.

9 This was, while not a liquidated amount, while not an  
10 amount used in the proof of claim, it was basically a  
11 multimillion-dollar issue, right? And I don't know if it was  
12 a tens-of-millions-of-dollar issue or more than that, but it  
13 was a multimillion-dollar issue, right?

14 MR. GAMEROS: Yes, Your Honor, I understand that.

15 THE COURT: I mean, that's stating the obvious,  
16 right, because you're saying that Highland wasn't really  
17 entitled to a 46-percent-whatever ownership interest in  
18 Multifamily, it would be something much, much lower than that.  
19 Okay. So I think we had in the record Mr. Dondero says the  
20 equity interest is worth \$20 million. And we know there was a  
21 Key Bank loan of up to \$500 million-plus. I mean, the proof  
22 of claim seeking reformation was ultimately a many-  
23 multimillion-dollar claim, if the theory prevailed, right?

24 MR. GAMEROS: That's right, Your Honor. It could  
25 have been.

1 THE COURT: Okay. So, again, assuming I get to the  
2 bad faith finding, I mean, shouldn't I look at these fees in  
3 that context? I mean, it wasn't just a proof of claim; it was  
4 a potentially multimillion dollar hit to the estate, a bundle  
5 of value that wouldn't be there for the creditors. Is that  
6 fair, or no?

7 MR. GAMEROS: Your Honor, I think it's blending some  
8 issues in a way that I don't think are appropriate. I think  
9 for analyzing whether or not it's a bad faith filing or bad  
10 faith prosecution, you have to look to see ill motive, animus,  
11 et cetera, and that's not present here. Instead, --

12 THE COURT: Yes. I'm just saying --

13 MR. GAMEROS: -- you've got Mr. Dondero --

14 THE COURT: I'm just saying assuming I get there.  
15 And I totally recognize I've got to look at the overall facts  
16 of the filing of the claim, of the prosecution, of the  
17 withdrawal. I have to look at all that to see do we have bad  
18 faith.

19 But assuming I get there, you've challenged the  
20 reasonableness. And it wasn't just some proof of claim. It's  
21 a complicated proof of claim, right? It's potentially a multi  
22 --

23 MR. GAMEROS: Your Honor, I understand that.

24 THE COURT: Okay, go ahead.

25 MR. GAMEROS: I'm sorry for interrupting, Your Honor.

1 Go ahead.

2 THE COURT: Oh, I'm just saying it was pretty darn  
3 complicated, the proof of claim. It wasn't quantified. And  
4 even though it wasn't quantified, it was clearly a  
5 multimillion dollar claim being asserted at the end of the  
6 day, the ownership interest that HCRE was trying to challenge.

7 MR. GAMEROS: That's the position, Your Honor. And  
8 they looked at that particular position at the time of filing  
9 and said the capital wasn't right, and their response to the  
10 objection lays out the different legal arguments. That's  
11 exactly what happened.

12 THE COURT: Okay. My next question is I think you're  
13 arguing that because I did not specifically find bad faith in  
14 my opinion -- I'm in the mood to talk about lengthy opinions  
15 today; it was a 39-page opinion, with 127 footnotes,  
16 disallowing the proof of claim -- because I did not make a  
17 finding of bad faith there, I'm somehow precluded at this  
18 juncture. Am I hearing your argument correctly?

19 MR. GAMEROS: Your Honor, I didn't say precluded. I  
20 just said we don't need to plow that ground again.

21 THE COURT: Well, --

22 MR. GAMEROS: I think you left the door open for this  
23 particular motion.

24 THE COURT: Uh-huh.

25 MR. GAMEROS: And that's what you did in your

1 opinion. And I just think you were asked repeatedly to make a  
2 bad faith finding, and at the time when you ruled disallowing  
3 the proof of claim, you didn't do it. You didn't say bad  
4 faith.

5 THE COURT: Okay.

6 MR. GAMEROS: That's all.

7 THE COURT: Okay. And then I guess my last question  
8 is you said if they, Highland, if they had just said yes, take  
9 the win, we wouldn't have all these fees. But I really want  
10 to drill down. Would that really have been a win, or would it  
11 have been a temporary stand-down? I mean, I begged you all to  
12 wrap it all up with language in connection with the withdrawal  
13 of the proof of claim. You know, agreed you weren't going to  
14 raise this issue again. And your client wouldn't let you do  
15 that.

16 So is it really fair to say, if they had just said yes and  
17 taken the win, we wouldn't have had these fees, when it  
18 appeared very likely that it was going to be new litigation in  
19 a different forum? What is your response to that?

20 MR. GAMEROS: Your Honor, we're looking back at what  
21 happened with hindsight, and I think if we're going to see the  
22 maybe-bad we should also see the maybe-good.

23 What's happened, in hindsight? Zero. Nothing. NREP  
24 hasn't done anything. Its proof of claim was disallowed last  
25 year, and nothing else has happened.

1 I think what really happened at the hearing and the motion  
2 to withdraw and what we were hearing from Highland, candidly,  
3 is they wanted to put a pin in that's our number forever,  
4 can't talk about it, don't want to do that. And the agreement  
5 allows for amendment.

6 And that was what we were hung up on. What if we need to  
7 amend this thing in the future? We don't want to be stuck  
8 with a 46 percent number that we can never get away from. And  
9 that was the problem. That was it.

10 THE COURT: All right. Thank you, Mr. Gameros.

11 Any rebuttal, Mr. Morris?

12 MR. GAMEROS: Thank you, Your Honor.

13 MR. MORRIS: I do. I'll be brief. It's exactly a  
14 \$20 million issue. It's not millions of dollars. It's  
15 exactly \$20 million. As I like to say, don't take my word for  
16 it, take Mr. Dondero's word for it.

17 In Dugaboy's pleading that was filed under seal on June  
18 30, 2022, he included his analysis of the value of Highland's  
19 assets. I don't want to go through them all, but I'm happy to  
20 report that he valued Highland's interest in SE Multifamily in  
21 that document that he represented to the Court was worth \$20  
22 million. So, from our perspective, we were fighting to get  
23 good, clean title to a \$20 million asset. That's Point #1.

24 Point #2, of course, the Court has inherent power under  
25 105 to enter orders of this type. I -- honestly, you know,

1 the cases are what the cases are. So there's never been a  
2 case exactly like this. You know what? I've been doing this  
3 for a while. I've never seen a proof of claim as baseless as  
4 this one.

5 So the whole concept of the 'but for' thing, I'll talk  
6 about in a minute, but there's no question that the Court has  
7 the power to enter orders of this type, and I don't even think  
8 counsel disputes that.

9 I do want to address the notion that we asked the Court  
10 repeatedly for a bad faith finding and the Court declined to  
11 do it. That's because this Court does its job and does its  
12 job well. And I understood Your Honor when you denied it  
13 without prejudice. It was telling. And apparently counsel  
14 got the signal, too, that you want to make sure that, before  
15 you enter an order of that type, that HCRE has due process.  
16 And that's why it's denied without prejudice. Because I was  
17 raising the issue for the first time at the podium, and you  
18 reluctantly, properly, prudently decided that probably isn't  
19 fair. And so you wanted to make sure that this thing was  
20 fully briefed. And it's been briefed, and that's why we're  
21 here today, not because you made a decision back in November  
22 of 2022 that there was no bad faith, but simply that you  
23 wanted to make sure that HCRE had a full opportunity to  
24 address the charge.

25 Getting to the 'but for' issue. But for the filing of,

1 frankly, a fraudulent, baseless proof of claim, Highland would  
2 have more than \$800,000 in its pocket today.

3 But for the filing of a motion to withdraw that sought an  
4 unfair litigation advantage while trying to preserve for the  
5 future more challenges to Highland's clear and good title to  
6 this asset, Highland would have more money in its pocket.

7 But for the conduct of a trial, the taking of depositions,  
8 and all of the rest of it, we wouldn't be here today.  
9 Highland would have more than \$800,000 in its pocket.

10 The notion that we should have taken the win, frankly, is  
11 offensive. That we should have just allowed them. He wants  
12 the benefit of the \$300,000 on the theory that we should have  
13 allowed him to take our depositions, not take their  
14 depositions, and fight another day. I just -- I'm speechless.  
15 I'll just leave it at that. The argument speaks for itself.

16 No motive? They had no motive here? They don't have ill  
17 will? They showed up at the hearing? Goodness, I hope that  
18 doesn't absolve them from filing a proof of claim with no  
19 basis in fact or law. Of course they showed up at the  
20 hearing. They would have been in contempt of court at that  
21 point had they not.

22 The only reason, apparently, they filed the proof of claim  
23 is because they didn't like the unintended consequences of the  
24 Highland bankruptcy that Mr. Dondero filed. In what world, in  
25 what courtroom, under what law, is that a good faith basis for

1 pursuing a proof of claim, because you don't like the  
2 unintended consequences of your own decisions? That's bad  
3 motive right there. To try to deny a debtor a \$20 million  
4 asset because you didn't like the way it turned out.

5 Mr. Dondero, Mr. McGraner, HCRE were perfectly happy for  
6 Highland to have a 46.06 percent interest in exchange for a  
7 \$49,000 contribution right up until the day they filed that  
8 proof of claim. Maybe until the day they filed for  
9 bankruptcy. I didn't ask that particular question.

10 It's not good faith to come to this Court, to file a proof  
11 of claim, to go through all of this, because you don't like  
12 the consequences of your own decision.

13 The Court really needs to ask itself whether or not it  
14 wants to sanction this. Whether it wants to allow litigants,  
15 claimants, to file proofs of claim with no due diligence, no  
16 basis in fact, no basis in law. I don't think the Court  
17 should do that. I think the bad faith finding is easy,  
18 frankly.

19 And with respect to our legal fees, they are what they  
20 are. The notion that this was overstaffed is kind of crazy.  
21 It was me, Ms. Winograd, and Ms. Cantey. We billed, the three  
22 of us, more than 82 percent of the total fee. And if you take  
23 out Mr. Adler, it's probably close to if not in excess of 90  
24 percent of it. It is what it is.

25 My rates are higher than some of the attorneys Mr. Dondero

1 hires. It is what it is. He knew about that when he hired  
2 us. They're market rates. Clients from east coast to west  
3 coast, from north to south, pay those rates every day, with  
4 bankruptcy court approval. I'm sorry if he doesn't like to  
5 pay those kinds of rates at this point in time, but they are  
6 what they are and my client is entitled to get reimbursed for  
7 this bad faith conduct.

8 I have nothing further, Your Honor.

9 THE COURT: Okay. Thank you.

10 Well, no surprise, we'll take this under advisement and  
11 issue a written opinion and order.

12 No surprise, I'm going to say like I always say, we'll get  
13 to this as soon as our calendar will allow, but I'm not going  
14 to promise a date on that.

15 Obviously, I'm going to be refreshing my memory, going  
16 back and studying the memorandum opinion and order I issued  
17 sustaining Highland's objection to this proof of claim and  
18 going back and looking at the transcript from that hearing  
19 that was submitted.

20 And I say this a lot, that timelines matter a heck of a  
21 lot to me and they reveal a heck of a lot. And I will be  
22 studying the timeline here and considering its significance.

23 Some of the important facts that will matter here are that  
24 the HCRE proof of claim, again, was filed timely in this case.  
25 April 8, 2020. It was signed by Mr. Dondero as the

1 representative of HCRE.

2 The evidence I do remember is that Mr. Dondero was  
3 president and sole manager of HCRE and he had signed the  
4 limited liability agreement for SE Multifamily Holdings, I  
5 think is the name of the entity. He had signed the agreement  
6 for both Highland and HCRE. There was an original LLC  
7 agreement and there was also an amended LLC agreement.

8 And again, I always think timelines -- again, I've said it  
9 a million times -- are very revealing. This was not a very  
10 ancient transaction, a very old transaction, in the Highland  
11 universe. The evidence I saw -- and again, I always create a  
12 timeline -- was that it was actually August 23, 2018 that this  
13 SE Multifamily entity was created, and then it was sometime  
14 early first quarter of 2019 where there was an amendment of  
15 the LLC agreement that brought in the BH entity and its six  
16 percent interest. And then, of course, it was October 2019  
17 when the bankruptcy was filed.

18 Again, why am I mentioning this? I'm mentioning it  
19 because this was fairly recent in Highland history that this  
20 whole SE Multifamily transaction, Project Unicorn, was done.  
21 And that matters to me because I would think memories should  
22 have been fresh relative to a lot of other things we've looked  
23 at during this case. And so that really is weighing on my  
24 brain here with regard to the bad faith possibility on the  
25 filing of the proof of claim and the prosecution. It, in my

1 view, could have been a quick process, doing the due diligence  
2 and assembling, you know, is there a good faith basis for this  
3 proof of claim or not. And that concerns me. That concerns  
4 me.

5 It, as I recall hearing the evidence, looked like, oh my  
6 goodness, look at the consequences now of this bankruptcy, and  
7 Highland falling out of the status of being a friendly partner  
8 with HCRE. We don't like this. We don't like this and we  
9 want to change this.

10 So, again, I'm sort of thinking out loud here. I'm sort  
11 of revealing where I'm leaning right now. It seems like this  
12 was a recent-enough transaction where someone could have  
13 assembled information pretty quickly and figured out if there  
14 was any basis to argue reformation.

15 And I never did have a clear idea why they would pack up  
16 their marbles and want to go home if there was some evidence.  
17 And again, the Bankruptcy Rules require the Court to enter an  
18 order whether withdrawal should be permitted or not. I very  
19 much wanted this to go away, and then there wasn't --  
20 wordsmithing could not come up with a sentence everyone would  
21 agree on to make it go away.

22 So I will, again, be drilling down on the evidence here as  
23 to whether we have bad faith, but that's some of the timeline  
24 and evidence I'm going to be drilling down on here.

25 I think *The Little Engine That Could* was the phrase Mr.

1 Morris argued. I remember very well the evidence was that  
2 Highland put in \$49,000 to get its membership interest in SE  
3 Multifamily Holdings, but I already heard that it was required  
4 ultimately to be a cosigner on a \$500 million loan from Key  
5 Bank. It provided resources, at least until some point during  
6 the bankruptcy, to SE Multifamily. And again, the tax benefit  
7 of absorbing the income from the entity, which, again, it's  
8 nothing to sneeze at here.

9 All of that I think was addressed pretty thoroughly in my  
10 earlier opinion, but again, I'm going to go back and look at  
11 it and the evidence and give you a thorough ruling one way or  
12 another on the indicia of bad faith as well as the  
13 reasonableness of fee-shifting.

14 All right. It sounds like I'm going to see you on  
15 February 14th, or some of you, and so I shall see you then.  
16 We're adjourned.

17 THE CLERK: All rise.

18 MR. GAMEROS: Your Honor?

19 THE COURT: I'm sorry?

20 MR. GAMEROS: Your Honor?

21 THE COURT: Yes.

22 MR. GAMEROS: Yeah, I'm sorry. I did ask, if you  
23 weren't going to deny it outright, if I could file a brief  
24 surreply. Is that allowed?

25 THE COURT: No. I've got enough on briefing on this.

1 Thank you.

2 MR. GAMEROS: All right. Thank you.

3 (Proceedings concluded at 11:41 a.m.)

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CERTIFICATE

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

23 **/s/ Kathy Rehling**

**01/24/2024**

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\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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

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In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) June 12, 2024  
) 10:00 a.m. Docket  
Reorganized Debtor. )  
) STATUS CONFERENCE RE:  
) HIGHLAND'S MOTION TO STAY  
) CONTESTED MATTER  
)

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

APPEARANCES:

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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 DALLAS, TEXAS - JUNE 12, 2024 - 10:04 A.M.

2 THE CLERK: All rise.

3 THE COURT: Please be seated. We will now begin a  
4 status conference we have set in Highland Capital, Case No.  
5 19-34054. This pertains to an order staying a contested  
6 matter that was initiated by Hunter Mountain Investment Trust.

7 All right. So let's get our lawyer appearances. We'll  
8 ask for Hunter Mountain, your appearance, please?

9 MS. DEITSCH-PEREZ: Good morning, Your Honor. This  
10 is Deborah Deitsch-Perez from Stinson for Hunter Mountain.  
11 Mr. Aigen is also on the line, I see, and he may assist me by  
12 pulling up a PowerPoint.

13 THE COURT: All right. I'm not sure why we're going  
14 to need a PowerPoint, but things are complex, shall we say, in  
15 this case as a general matter.

16 MS. DEITSCH-PEREZ: A short one.

17 THE COURT: So we will see what that's going to be  
18 about.

19 All right. For the Debtor, who do we have appearing?

20 MR. MORRIS: Good morning, Your Honor. It's John  
21 Morris from Pachulski Stang Ziehl & Jones on behalf of  
22 Highland Capital Management, LP.

23 THE COURT: Okay. I should say Reorganized Debtor,  
24 not Debtor. We're a few years down the road.

25 All right. Do we have other lawyers who want to appear

1 today?

2 MR. STANCIL: Your Honor, this is Mark Stancil from  
3 Willkie Farr & Gallagher. I'm joined by my colleague, Josh  
4 Levy. We represent Mr. Seery.

5 THE COURT: All right. Thank you.

6 Would that be all of our lawyer appearances, I presume?

7 All right. Well, let's be clear about why we are here.  
8 And I'm sure the lawyers will correct me if I'm wrong. There  
9 was a motion filed, I don't know, I would say January-ish of  
10 this year by Hunter Mountain Trust -- I'll call it a  
11 Gatekeeper Motion -- where Hunter Mountain was wanting leave  
12 of this Court to file a lawsuit in the Delaware Chancery Court  
13 against Mr. Seery regarding his role as the Claimant Trust  
14 Trustee. And we had a hearing January 25th, and the Court  
15 indicated it would stay the motion because I had -- I think  
16 that was when I had under advisement, maybe I'd just taken  
17 under advisement a Hunter Mountain motion for leave to file --  
18 to go forward with another type of suit involving -- I think  
19 it was the Valuation Suit.

20 MS. DEITSCH-PEREZ: Your Honor? Your Honor?

21 THE COURT: Okay. So, anyway, I know I stayed the  
22 motion for leave to go forward in Delaware Chancery Court.  
23 Ms. Deitsch-Perez, what were you wanting to say?

24 MS. DEITSCH-PEREZ: I was going to say I believe Your  
25 Honor stayed the case awaiting your hearing and decision of

1 the motion to dismiss the valuation complaint.

2 MR. MORRIS: Correct.

3 THE COURT: All right. So, and I did go back and  
4 look at my order a few days ago, and I said we'd have a status  
5 conference after I ruled on that, right? So that's why we're  
6 here?

7 MR. MORRIS: Yes.

8 MS. DEITSCH-PEREZ: I think so. What Your Honor said  
9 was that you thought it was possible that your decision in the  
10 valuation case might bear on the motion to stay -- on the  
11 motion for leave, and so you stayed the matter, said we would  
12 have a status conference after it was decided. After it was  
13 decided, we called Ms. Ellison and asked for a status  
14 conference so that we could address whether or not the  
15 dismissal of the valuation complaint had any bearing on this  
16 matter.

17 In a nutshell, the Court dismissed the valuation complaint  
18 on the ground that the Plaintiffs had no standing to seek the  
19 valuation because the conditions in the CTA had not been met.  
20 Putting aside whether the parties believe that was correct --  
21 it is being appealed -- the motion for leave is materially  
22 different and cannot and should not be decided on the same  
23 basis. And that's what we're here to discuss today.

24 THE COURT: All right. So we're here on the status  
25 conference because I ruled we would have a status conference

1 down the road to look at whether should we continue to stay  
2 the Hunter Mountain motion for leave to go forward in the  
3 Delaware Chancery Court.

4 So we're here pursuant to my prior order. And your  
5 client, Hunter Mountain, is arguing this is materially  
6 different, and so I can't figure out for the life of me why  
7 this is materially different. I'm just going to share my  
8 thinking right now. I have ruled three times now, right, that  
9 Hunter Mountain doesn't have standing. And I --

10 MS. DEITSCH-PEREZ: Your Honor, I --

11 THE COURT: And if it didn't have standing Time 1, 2,  
12 and 3, why on earth would it have standing now?

13 MS. DEITSCH-PEREZ: Your Honor, I'm prepared to  
14 explain why it's different. But if Your Honor has already  
15 decided on the basis of what you already have before you that  
16 Hunter Mountain has no standing, even though, here, the  
17 allegations concern -- are that Mr. Seery is deliberately  
18 manipulating the estate to maintain his tenure at his  
19 \$150,000-a-month job by not paying creditors and refusing to  
20 issue the certification. And that allegation, and the fact  
21 that the law requires that this be decided by a Delaware  
22 court, if those things are not enough for Your Honor to  
23 believe that this matter is different and should be decided  
24 differently, then we would ask that you simply rule that  
25 Hunter Mountain has no standing and is not entitled to have a

1 Delaware court make the decision of the matters at issue in  
2 the motion for leave, and we would take it up at the same time  
3 as the valuation motion, so that the issue that Your Honor was  
4 concerned about --

5 THE COURT: What do you mean, you would take it up at  
6 the same time as the valuation motion?

7 MS. DEITSCH-PEREZ: In other words, if Your Honor  
8 were to rule right now, as you've indicated, that you believe  
9 that --

10 THE COURT: Right. You would appeal, and then what?  
11 What do you mean?

12 MS. DEITSCH-PEREZ: If I could finish, Your Honor.  
13 If Your Honor ruled that Hunter Mountain has no standing to  
14 seek leave to sue Mr. Seery in Delaware court and that the CTA  
15 overrides Delaware law if Delaware law --

16 THE COURT: Got it, got it, got it.

17 MS. DEITSCH-PEREZ: Right? Okay. If Your Honor were  
18 to rule that and deny the motion for leave, we would appeal  
19 that at the same time -- on the same timeline as the appeal of  
20 the valuation decision. And then Your Honor's concern about  
21 potentially conflicting rulings would not exist. We would  
22 consent to the same court hearing both so that we --

23 THE COURT: What makes you think a district judge  
24 would consolidate these two appeals? Or I guess it would be  
25 three appeals.

1 MS. DEITSCH-PEREZ: We have no control over that, but  
2 we would consent to it. The Debtor has expressed a concern  
3 about inconsistent rulings, and so if both parties sought for  
4 them to be -- the matters to be heard by the same judge --  
5 we've done that in the past with all the -- with the reports  
6 and recommendations arising out of the withdrawal of the  
7 reference -- in every instance where the parties have  
8 requested the same judge to hear appeals from this Court, the  
9 District Court has agreed.

10 So while I certainly don't presume to control the District  
11 Court, we have good evidence that they would do so. And that  
12 would be the most efficient. It would minimize the chances of  
13 inconsistent rulings.

14 THE COURT: Okay. I'm going to hear your PowerPoint  
15 and see if there's something I'm missing, but this is really  
16 -- you said extremely different, or words to that effect. But  
17 I'm going to tell you right now, I would not -- to all the  
18 lawyers -- I would not be presumptuous and think that some  
19 district judge, let's say the one who has the current Hunter  
20 Mountain appeals, I don't know if it's one judge or two, is  
21 going to say, sure, we'll consolidate.

22 I mean, that's just not the way they work. Maybe you got  
23 lucky. Probably it was the Note Litigation, okay, where it  
24 made a ton of sense to consolidate that. But let me just be  
25 blunt. Bankruptcy is not their priority. The Constitution

1 requires that criminal matters be their priority. They're  
2 just, you know, they're not going to --

3 MS. DEITSCH-PEREZ: Your Honor, all we can do is ask.

4 THE COURT: They don't see the world the way we  
5 bankruptcy nerds see the world. Okay? That's just my  
6 experience. And I don't expect them to.

7 But, anyway, I -- who, by the way, has the Hunter Mountain  
8 appeals? Do we have that handy? I'm just curious.

9 MS. DEITSCH-PEREZ: I don't --

10 THE COURT: Judge Ada Brown? Does she have all of  
11 them, or just --

12 MR. MORRIS: She does. She has the main appeal of  
13 the order denying the motion for leave to sue Mr. Seery,  
14 Stonehill, and Farallon, the one that was the subject of the  
15 evidentiary hearing last June. She does have that matter  
16 right now.

17 THE COURT: And right now, do we have a judge  
18 assigned to the more recent order denying --

19 MS. DEITSCH-PEREZ: That was just --

20 THE COURT: -- Hunter Mountain leave?

21 MR. MORRIS: Not that I know of.

22 MS. DEITSCH-PEREZ: That was --

23 MR. MORRIS: That notice of appeal was just filed, I  
24 think, on June 7th, and I don't know if that's been assigned  
25 yet.

1 THE COURT: My law clerk over here is saying no.  
2 You're correct; there's no judge assigned to that. So we, you  
3 know, we --

4 MS. DEITSCH-PEREZ: So it is possible, then, that we  
5 could ask Judge Brown to hear all three. That's a  
6 possibility.

7 MR. MORRIS: May I be heard at some point, Your  
8 Honor?

9 THE COURT: Well, absolutely. Absolutely. But I am  
10 just, I'm focusing on procedure at the moment. And we'll let  
11 you explain why you think this is different, but surely you  
12 know where my brain is.

13 I've ruled three times now that Hunter Mountain does not  
14 have standing under the terms of the plan and under Delaware  
15 law. And three times, we have written lengthy opinions on  
16 that. And my impression, after sitting here 18 years, is the  
17 District Court is going to be very irritated with me and  
18 everyone else if I rule yet a fourth time on this and there is  
19 an appeal sent their way. Consolidation or no consolidation,  
20 at some point judicial economy and efficiency of the parties  
21 rears its head.

22 I mean, why wouldn't I stay this further and see how Judge  
23 Brown rules in the other matter? Heck, --

24 MS. DEITSCH-PEREZ: Your Honor, the --

25 THE COURT: -- at some point this plan could go

1 effective. I mean, excuse me, could be fully implemented.  
2 But I think we know why it hasn't been. My impression is  
3 certainly all we have left is to resolve all the litigation  
4 involving your client.

5 MS. DEITSCH-PEREZ: Your Honor, the reason you cannot  
6 stay it is because the Fifth Circuit and the Supreme Court  
7 have a very high standard for staying litigation, and by  
8 staying it you would be effectively denying the very relief  
9 that's being sought. Hunter Mountain is entitled to try to  
10 end this by removing a trustee with a conflict who is eating  
11 up the costs -- the money in the estate. And we're entitled  
12 to have that decided. And by staying it, you are effectively  
13 denying the relief. That's what's impermissible. The Fifth  
14 Circuit and the Supreme Court have set a very high bar to  
15 staying litigation.

16 This is not like the motion for mediation, where we  
17 harbored no illusion whatsoever that Your Honor would stay  
18 litigation over the Debtor's objection. The only --

19 THE COURT: Okay. It never would have occurred to me  
20 this was analogous to the motion to stay litigation. I think  
21 it's analogous to three different motions your client has  
22 filed and I've ruled on. I don't know, --

23 MS. DEITSCH-PEREZ: Your Honor, I will show you why  
24 it's different.

25 THE COURT: -- what number of pages, Courtney, were

1 our three rulings? And I say three because --

2 MS. DEITSCH-PEREZ: Your Honor?

3 THE COURT: -- there was a motion for  
4 reconsideration. I mean, a couple hundred pages of ink spilt  
5 that some district judge --

6 MS. DEITSCH-PEREZ: Your Honor?

7 THE COURT: -- has got to read? And why are we doing  
8 the same thing over and over? It's like the famous --

9 MS. DEITSCH-PEREZ: That's what I --

10 THE COURT: -- Einstein saying. You know, the famous  
11 Einstein saying. What did he say?

12 MR. MORRIS: The definition of insanity, Your Honor,  
13 doing the same thing over and over again, expecting a  
14 different result? That was going to be my opening line.

15 THE COURT: Oh, wow. Oh, wow. Okay. Well, that's

16 --

17 MR. MORRIS: So we're in the same place.

18 THE COURT: -- definitely the one I was thinking.

19 MS. DEITSCH-PEREZ: Your Honor, the difference --

20 THE COURT: Okay. Ms. Deitsch, just --

21 MS. DEITSCH-PEREZ: The difference is that this was

22 --

23 THE COURT: -- let's make -- just make your  
24 presentation and then we'll hear Mr. Morris's presentation.

25 If something is horribly lost on me, this is your chance to

1 show me that I am totally missing the boat on why this  
2 situation is different.

3 MS. DEITSCH-PEREZ: Okay. There are two points here.  
4 One is we would like you to understand why it's different and  
5 see why it's different. But if you have already made up your  
6 mind, then simply deny the motion for leave, opine that the  
7 CTA overrides Delaware law, and the most efficient path is to  
8 have this evaluation and the insider trading case be appealed  
9 where that will be the most efficient use of resources.

10 So let me go -- could I ask --

11 MR. MORRIS: Your Honor, I apologize.

12 THE COURT: Okay. Before we do the whole PowerPoint,  
13 --

14 MR. MORRIS: I would love to be heard on the  
15 procedural point. Just the procedural point.

16 THE COURT: All right. You may, Mr. Morris.

17 MR. MORRIS: There is no motion to dismiss pending  
18 before the Court. What you're being asked to do, the Court  
19 doesn't have the authority to do. What we're here today to  
20 decide is whether or not to extend the stay. The answer is  
21 either going to be yes or no.

22 If the stay is extended, we're done. If the stay is not  
23 extended, then we're going to have to answer the complaint.  
24 And we're going to make a motion to dismiss. And we're going  
25 to have a whole -- with a Rule 11 motion, because this is all

1 collaterally estopped. But putting that aside for the moment,  
2 going to the District Court would be appropriate only if  
3 Hunter Mountain agrees that the issues are the exact same as  
4 raised in the stay.

5 You're about to hear a presentation that says, oh, no, no,  
6 they're not. These issues have never been heard before,  
7 they've never been briefed before, and there is no chance that  
8 it would be appropriate that the Court would have the  
9 authority to send this -- to make a decision on a case on a  
10 matter that's never been briefed. Right?

11 It's either a stay or it's not a stay. If it's a stay,  
12 let's go home. If it's not a stay, then we're going to answer  
13 the complaint with a motion to dismiss, and they can come back  
14 and tell us at that time, in writing, with notice, why they're  
15 not collaterally estopped by Your Honor's prior orders.

16 That's all.

17 THE COURT: Okay.

18 MS. DEITSCH-PEREZ: And that would normally be the  
19 case, Your Honor, but here the Court can sua sponte deny the  
20 motion. The Court has said repeatedly that it views it as the  
21 same. And so we are saying we would forego further briefing  
22 if Your Honor wanted to simply sua sponte dismiss the matter  
23 so that it could be appealed. And so it could be appealed on  
24 the same timeline more or less as the other matters that are  
25 proceeding.

1 I'll continue on now with --

2 THE COURT: Okay. Well, --

3 MS. DEITSCH-PEREZ: -- with the presentation.

4 THE COURT: I'll state the obvious. And as Mr.  
5 Morris said but I think you know very well, Ms. Deitsch-Perez,  
6 this is just a motion to unstay the contested matter -- I  
7 mean, it may be premature to call it a contested matter -- to  
8 unstay proceedings on Hunter Mountain's motion for leave to  
9 file a complaint in the Delaware Chancery Court. Should I  
10 keep the stay in place or not? Okay? So, --

11 MS. DEITSCH-PEREZ: I understand we're --

12 THE COURT: -- I don't think anyone has any confusion  
13 about that, and it's the reason why I said something about you  
14 having a PowerPoint. I was a little surprised that you would  
15 have a PowerPoint on this, but if you do, you do. I'll let  
16 you present it.

17 But I would never jump ahead, just so everyone is crystal  
18 clear, I would never jump ahead to a substantive ruling today  
19 that I'm denying your motion for leave to file the complaint  
20 in the Delaware Chancery Court. It would be either we're  
21 continuing the stay, we're going to continue the stay, please  
22 upload a new order supplementing my prior order saying the  
23 stay is going to be continued until whatever we decide, or  
24 it's going to be the stay is lifted, parties have, you know,  
25 21 days to respond to Hunter Mountain's motion for leave to

1 file a complaint. Okay? So I hope there was no confusion on  
2 that.

3 MS. DEITSCH-PEREZ: No, Your Honor, we were simply  
4 responding to your repeated suggestion that this is the same  
5 and Hunter Mountain has no standing and the CTA overrides  
6 Delaware law, which was, if that was already determined and  
7 you did not need further explanation from the Reorganized  
8 Debtor on that in opposition, because we've already filed the  
9 motion for leave, then we would not argue as a procedural  
10 point that Your Honor could not simply make a decision.

11 THE COURT: Okay.

12 MS. DEITSCH-PEREZ: I understand that Mr. Morris is  
13 saying he does not want that because the whole goal here is to  
14 delay this long enough so that we can never be heard in  
15 Delaware. So I understand Mr. Morris's position.

16 MR. MORRIS: You know, Your Honor, I just, I so  
17 regret these ad hominem attacks. The fact of the matter is we  
18 don't have a pleading. We're about to hear arguments from Ms.  
19 Deitsch-Perez for the very first time. She's never briefed  
20 these issues. And I'm just going to leave it at that. This  
21 is just so improper.

22 THE COURT: All right. Well, how lengthy is your  
23 PowerPoint, and is it really geared towards the stay issue?

24 MS. DEITSCH-PEREZ: It is, Your Honor. It's seven  
25 slides.

1 THE COURT: Okay.

2 MS. DEITSCH-PEREZ: It's not very long. And there is  
3 nothing that we are going to raise that the Debtor is not  
4 aware of.

5 THE COURT: All right. Well, I'll let you present  
6 your seven slides. And, again, I think we're all crystal  
7 clear. This is just about is it time to lift the stay. And  
8 we've had a lot of preliminary discussions and I've made a lot  
9 of comments because it just seemed like the common-sense  
10 approach we might all agree to was let the District Court  
11 decide your appeal. She may say --

12 MS. DEITSCH-PEREZ: We do not agree to that --

13 THE COURT: -- Hunter Mountain has standing. She may  
14 say Hunter Mountain has standing, let them go forward with  
15 their valuation thing, with their suit they want to file  
16 against Farallon and whoever the other one was, I can't  
17 remember. You know, let them -- they have standing. She may  
18 view the plan documents, the Claimant Trust Agreement,  
19 Delaware law different. If she does, then absolutely I  
20 probably should lift the stay in this matter. I mean, I  
21 guess. I don't know.

22 MS. DEITSCH-PEREZ: Your Honor?

23 THE COURT: But it just seems like a matter of  
24 efficiency. You filed the appeals. You want it heard.  
25 You're entitled to that. Let that happen, and then we'll

1 figure out where we go from there. Except, as we well know,  
2 probably one party will file an appeal to the Fifth Circuit.  
3 So I'm just trying to understand what is rational here, and --

4 MS. DEITSCH-PEREZ: The Fifth Circuit has already  
5 rejected this very maneuver. And we have a slide that will  
6 tell you the --

7 THE COURT: Maneuver? What maneuver? What maneuver?  
8 Whose maneuver?

9 MS. DEITSCH-PEREZ: The maneuver is to stay a case,  
10 but it's the Debtor's request, to stay a case while awaiting  
11 other cases' decisions on standing. That's not proper. All  
12 of the cases should go up at the same time. If there's a  
13 dispositive ruling on standing at some point, well, it could  
14 be raised at that time. But there's no reason to stay, to  
15 prevent a party from having its day in court, because of the  
16 potential that another case is going to decide a similar or  
17 even the very same --

18 THE COURT: Okay. Present your PowerPoint and we'll  
19 perhaps better understand.

20 MS. DEITSCH-PEREZ: Okay. So, I'm --

21 Mike, if you can pull it up and go to Slide 2.

22 Okay. So, and before I get to that, yesterday we filed a  
23 notice of supplemental authority because since -- this is a  
24 very unusual circumstance.

25 THE COURT: Where did you file that?

1 MS. DEITSCH-PEREZ: In the bankruptcy. We filed a  
2 copy of the *Morris v. Spectra* Delaware case that the Debtor  
3 already had because we had found it, I think Mr. Aigen  
4 deserves the credit for this, and had provided it to the other  
5 counsel for HMIT to --

6 THE COURT: Okay. Just so you know, I've not seen  
7 it, I've not read it. So, --

8 MS. DEITSCH-PEREZ: Okay. I will describe it --

9 THE COURT: And I would not have been looking for it  
10 before a status conference.

11 MS. DEITSCH-PEREZ: Okay. I will -- it's very easy  
12 to describe. It's a Delaware case. And that was a case where  
13 someone was attempting to challenge -- a former shareholder  
14 was attempting to challenge a merger. And normally the rule  
15 in Delaware is, if you're not a shareholder, you can't  
16 challenge it anymore. You're not a shareholder; you can't  
17 challenge the merger.

18 But the claim there was that the Defendants had wrongfully  
19 caused the merger to eliminate the shareholders' ability to  
20 complain. And the Delaware Supreme Court said, gee, if  
21 someone deliberately does something to strip someone of their  
22 standing, we're not going to allow that, so we are going to  
23 allow someone who is no longer a shareholder to still complain  
24 about the merger.

25 And this is what we found, this is the most analogous

1 Delaware law we have found, and shows that it is appropriate,  
2 if someone does something that prevents someone from having  
3 standing, the Court should still allow the case to go forward.

4 So that's one reason why this is different. But the right  
5 to be heard in Delaware on an issue of the workings of a  
6 trust, on the issue of removing a trust, that's something that  
7 is subject to Delaware law and has to be decided by a Delaware  
8 court. And we cited in the opposition to the stay the *United*  
9 *Brotherhood* case and the Delaware statute that provides that.

10 And so that's another reason this case is different than  
11 the insider trading case or the valuation case, because this  
12 expressly involves the internal workings of a trust, which,  
13 even if you had a contract that had a venue provision,  
14 Delaware law says you can ignore that because this is  
15 important enough that we want this resolved by a Delaware  
16 court.

17 So, in Your Honor's decision dismissing the valuation  
18 proceeding, you relied on the Plaintiff's supposed agreement  
19 to the CTA as precluding them from challenging it or from  
20 invoking the duty of good faith and fair dealing. And I think  
21 you said something like that earlier today also. But that  
22 analysis is wrong here.

23 First, Hunter Mountain didn't negotiate or agree to the  
24 CTA. If you remember, at the time of the plan, the estate's  
25 projections were that payments would only be made through

1 Class 8. So Classes 10 or 11 had no reason to address the  
2 CTA.

3 But second, the duty of good faith and fair dealing can,  
4 should, really, must be raised when a party's actions actually  
5 prevent a condition precedent from occurring.

6 So the Court's conclusion that the existence of a  
7 condition precedent -- in other words, the conditions for  
8 vesting -- precludes a claim for good faith and fair dealing  
9 ignores the whole body of law that a party can't take  
10 advantage of his own wrongdoing.

11 So this isn't a case -- this usually comes up in the  
12 circumstance where somebody is claiming there's a breach of  
13 good faith and fair dealing because a party didn't do  
14 something that's expressly not required by the contract, where  
15 the duty of good faith and fair dealing is being used to  
16 contradict the contract. But that's not what's happening  
17 here.

18 Here, the complaint that is sought to be brought in  
19 Delaware is saying that Mr. Seery is thwarting the occurrence  
20 of the condition precedent, and the Plaintiff is entitled to  
21 have its allegations taken as true. And if that is true, that  
22 is the classic case for the invocation of good faith and fair  
23 dealing.

24 And we cite in the motion for leave the *Dunlap* case, the  
25 *Injective Labs* case, and the *Snow Phipps* case, all of which

1 are cases where there was some condition in the contract that  
2 the other side was alleged to be preventing from happening,  
3 and the courts allowed those -- either allowed the -- said  
4 that the parties (inaudible) to make that clear or allow the  
5 claim to go forward.

6 So these cases are directly counter to this case's  
7 mistaken conclusion that the vesting provision precludes HMIT  
8 from raising the good faith and fair dealing here. This is  
9 exactly when you must raise good faith and fair dealing, and  
10 it's entirely appropriate. So it is not like the valuation  
11 case, which was asking for information. It's not exactly like  
12 the insider trading case, either. Here, it is exactly when  
13 good faith and fair dealing governs.

14 So, for all of these reasons, the Court's prior decisions  
15 aren't governing here and are not a basis for staying or  
16 denying the gatekeeper matter.

17 But as we've said, if the Court's already decided  
18 otherwise, we would not object to the procedure of the Court  
19 sua sponte simply sending this on. What would not be fair  
20 would be stalling this case to prevent HMIT from seeking the  
21 Delaware decision-making to which it's entitled. And that's  
22 why, when the issue is a stay of court proceedings, the Fifth  
23 Circuit and the Supreme Court have a very high bar.

24 Mike, next slide. Mike, Slide 3. Okay.

25 Okay. So let's remember the standard for obtaining a

1 stay: A strong showing of likelihood to succeed on the  
2 merits; whether the movant -- that's the Debtor here -- will  
3 be irreparably harmed absent a stay; whether the issuance of a  
4 stay will injure other interested parties -- Hunter Mountain;  
5 and where the public interest lies.

6 And the Supreme Court has characterized the circumstances  
7 in which a stay is appropriate as rare. And that's the *Landis*  
8 case cited by the Northern District.

9 And Highland, in the motion for stay, doesn't address this  
10 standard at all. And in the initial hearing we had, Highland  
11 said, and the Court seemed to agree, well, the standard isn't  
12 required because, remember, when you all sought a stay for the  
13 mediation, you didn't raise the standard.

14 But that was very different, because for the mediation we  
15 had no illusion that Your Honor would grant a stay over the  
16 objection of the Debtor. So, really, what we were talking  
17 about in that circumstance is a consensual stay. And then the  
18 standard wouldn't apply.

19 Let's go to Slide 4, Mike.

20 Okay. And here is the case, the *Jamison* case, which  
21 relied on Supreme Court *Landis* case, said the defendant  
22 requested a stay pending the Supreme Court's rulings on two  
23 different cases where the same or virtually the same standing  
24 question was raised, and the Court denied the motion, saying  
25 that, because standing is an issue that can be raised at any

1 time, there was no reason to stay, because if the Supreme  
2 Court made a ruling that was dispositive it could be raised  
3 when that happened.

4 And that's exactly what the circumstance is here. The  
5 case should go forward, and if the Fifth Circuit makes a  
6 dispositive ruling, if there's a dispositive ruling that would  
7 end one of these other cases and is not distinguishable, it  
8 could be raised at that time.

9 So, go to the next slide.

10 Okay. And so the Fifth Circuit has also said  
11 discretionary stays, even when -- if they are lengthy or  
12 indefinite, should not be granted. That is exactly what the  
13 Debtor is asking for here. Let's take a look at how long  
14 things have been taking.

15 Go to Slide 6.

16 Okay. The Notes cases, the Court's reports and  
17 recommendations, December '22, the Notes case is still pending  
18 in the Fifth Circuit, the HarbourVest settlement. And this is  
19 not including the lower court, the District Court intermediate  
20 action. Two years. UBS, I mean, huge amounts of time. It's  
21 one and half to two years. All of them.

22 So if in fact the Court were to stay until a final  
23 decision, or even the decision of the next court, we are  
24 talking about a long enough time that it creates the very harm  
25 that the motion for leave -- that the complaint that Hunter

1 Mountain is trying to file is seeking to avoid.

2 This Court knows how long it takes to get through the  
3 District Court, out of the Fifth Circuit, much less, as we  
4 have with the release matter, going all the way to the Supreme  
5 Court.

6 So, if Hunter Mountain has to await a final nonappealable  
7 decision of the valuation proceeding before it can even start  
8 to seek to remove Seery in Delaware court, even winning would  
9 be a pyrrhic victory, because Mr. Seery will have remained  
10 employed and spending money and moving money into the  
11 indemnity subtrust for two or more years. And so a stay  
12 thereby creates irreparable harm for Hunter Mountain.

13 So, in sum, using the Claimant Trust Agreement to preclude  
14 Hunter Mountain from seeking removal of the Trustee actually  
15 underscores why Delaware law is crafted the way it is. Were  
16 it not for the duty of good faith and fair dealing imposed by  
17 Delaware law, Mr. Seery could arguably continually increase  
18 the funds set aside for indemnification, indefinitely withhold  
19 final distributions to Class 9 -- we believe Class 8 has  
20 already been paid in full -- and refuse to file the GUC  
21 certification.

22 Would it be okay if he paid everything other than \$10 and  
23 refused to issue the GUC certification based on a theoretical  
24 possibility that he might need more money for indemnification?  
25 The amount that's been set aside for indemnification is so

1 much more than the \$25 million that was originally  
2 contemplated at the time of the plan. So this is exactly the  
3 kind of conflict that Delaware Code Section 3327 regarding the  
4 removal of trustees is designed to prevent. It's designed to  
5 prevent the conflict where the trustee has a reason to hold  
6 onto the money that he or it is holding in trust for another  
7 party.

8 This is -- whatever the excess is, that belongs to Hunter  
9 Mountain. It doesn't belong to the professionals. It doesn't  
10 belong to Mr. Seery. And so someone who does not have this  
11 conflict should be making these decisions. And Hunter  
12 Mountain is entitled to go to Delaware for that decision.

13 So, putting this on ice is simply allowing the Claimant  
14 Trust to avoid scrutiny, and we would ask that Your Honor not  
15 do that.

16 Thank you.

17 THE COURT: Mr. Morris?

18 MR. MORRIS: Your Honor, I just want to begin where  
19 counsel left off. The excess -- if there is such a thing, and  
20 I don't know that there is, and I don't know that anybody will  
21 know until the case is over -- but the so-called excess  
22 belongs first to indemnified parties. Indemnified parties  
23 have a contractual right to be indemnified, frankly, before  
24 Class 8 or Class 9 receive a nickel, let alone Class 10 or 11.

25 So let's be really clear that what's happening here, as

1 Your Honor alluded to earlier, is that resources must be  
2 husbanded because of the ongoing onslaught of litigation.  
3 This case could be over tomorrow if Mr. Dondero would give a  
4 release to all protected parties.

5 So, just a little bit of background, though. Obviously,  
6 this issue of Hunter Mountain and Dugaboy's standing has been  
7 percolating for exactly two years. It was in June of 2022  
8 that Mr. Draper on behalf of Dugaboy brought the first  
9 valuation motion. He was soon joined by Mr. Phillips on  
10 behalf of Hunter Mountain. That effort was the subject of  
11 substantial briefing over the rights or so-called rights or  
12 potential rights of Class 10 and Class 11, and ultimately Your  
13 Honor decided that the relief they sought was not appropriate  
14 as a contested matter and had to proceed as an adversary  
15 proceeding.

16 The next calendar year, 2023, we have a new lawyer for  
17 Hunter Mountain, Sawnie McEntire and his firm. Again, the  
18 issues of standing and Hunter Mountain's unvested contingent  
19 interest and the meaning of that were the subject of  
20 substantial litigation in 2023.

21 Now we've got a third lawyer, the Stinson firm, again  
22 representing Hunter Mountain, again raising basically the  
23 exact same issue.

24 Your Honor has issued multiple decisions that go into  
25 great detail. I want to just read just a couple of lines from

1 the Court's most recent decision that was filed at Docket No.  
2 26 in Adversary Proceeding 23-03038.

3 On Page 29, the Court wrote that the Court "finds and  
4 concludes that under the terms of the CTA and Delaware law,  
5 Plaintiffs are not beneficiaries or beneficial owners of the  
6 Claimant Trust who would be entitled to assert rights under  
7 the CTA. The Claimant Trust is a Delaware statutory trust  
8 governed by the Delaware Statutory Trust Act, and the Trust  
9 Act does define 'Beneficial Owner' and uses that term  
10 exclusively to refer to the beneficiaries of a Delaware  
11 statutory trust. Specifically, under the Trust Act, a trust's  
12 -- a statutory trust's beneficial owners are any owners of a  
13 beneficial interest in a statutory trust, the fact of  
14 ownership to be determined and evidenced in conformity with  
15 the applicable provisions of the governing instrument of the  
16 statutory trust."

17 Your Honor went on at Page 30, said, "It appears that  
18 Plaintiffs may be frustrated that they did not negotiate or  
19 obtain the same oversight rights as the actual Claimant Trust  
20 beneficiaries in the plan and the CTA. The plan, with the  
21 incorporated CTA, was confirmed over three years ago now, and  
22 neither the Plaintiff -- neither of the Plaintiffs objected or  
23 appealed to the terms of the plan or the CTA that dictate  
24 those oversight rights. The Fifth Circuit, in September of  
25 2022, affirmed the confirmation order and the terms of the

1 plan and its incorporated documents, including the CTA, in all  
2 respects other than striking certain exculpations."

3 Then, finally, Your Honor pointed out that "Plaintiffs  
4 make an argument that an implied covenant of good faith and  
5 fair dealing under Delaware law necessarily means that the  
6 terms of the CTA that govern the parties' rights here,  
7 including the information rights and the rights to an  
8 accounting from the Claimant Trustee that Plaintiffs seek in  
9 Count One can be overridden here. The Court disagrees. The  
10 Court will not use the implied covenant of good faith to  
11 override the rights and responsibilities that were bargained  
12 for in the trust agreement."

13 An exhaustive opinion. It is collateral estoppel at this  
14 point. I frankly think that Rule 11 gets implicated when  
15 lawyers continue to push issues that have already been  
16 decided.

17 It is the exact same issue. There is no claim for breach  
18 of good faith and fair dealing in the complaint. Just look at  
19 the proposed complaint that was filed at Docket No. 4000.  
20 Exhibit 1. There are five causes of action. Every one of  
21 them is premised not on a breach of good faith and fair  
22 dealing but on a breach of Delaware Corporate Law 3327. And  
23 as Your Honor knows from the extensive briefing that we've  
24 had, the Court looks to the trust document to determine the  
25 rights of the beneficiaries, and only beneficiaries have

1 rights under 3327.

2 This is law of the case. These parties are collaterally  
3 estopped from continuing to do this. The fact that they  
4 suggest that they could just bring lawsuit after lawsuit after  
5 lawsuit after lawsuit, where standing is always going to a  
6 threshold issue, until every single judge in the Northern  
7 District of Texas has an opportunity to weigh in is  
8 preposterous.

9 Let me go through -- let me just refer and respond to a  
10 couple of these last points. The statute that Ms. Deitsch-  
11 Perez cited in her first slide, 3804(e), it only applies if  
12 you're a beneficial owner. This Court has decided multiple  
13 times Hunter Mountain and Dugaboy are not beneficial owners.

14 Next. The duty of good faith and fair dealing, as I  
15 mentioned, it's not even a claim in the proposed complaint.  
16 And I know of no law, and I don't think anybody will ever be  
17 able to cite any law, that suggests a party to a contract owes  
18 a duty of good faith and fair dealing to someone with no  
19 rights under the contract. How is that even -- how does that  
20 even make sense?

21 I have no rights under the contract, that's what this  
22 Court has already held, but somehow Mr. Seery has an implied  
23 duty of good faith and fair dealing. Makes absolutely no  
24 sense.

25 The standard of likelihood of success on the merits.

1 Right? I don't think that standard applies when the Court is  
2 just policing its docket. But even if it did, likelihood of  
3 success on the merits? It's a certainty. The Court has  
4 already decided. We have won. Right? They can't -- they  
5 have no standing. So there's a hundred-percent certainty that  
6 we're likely to succeed on the merits.

7 This is not going to be lengthy or indefinite, and I will,  
8 you know, just say, Your Honor, that the Plaintiffs here have  
9 some control over this. There probably hasn't been five  
10 percent of the appeals where we don't get eventually some  
11 request for an extension of time. It happens every time.  
12 They're taking weeks now to file their appellate record.  
13 They're within the rules. They have the right to do. But if  
14 they want this to proceed more quickly, stop asking for  
15 extensions of time. We'll move quickly. We don't have a  
16 problem doing that at all.

17 Mr. Seery owes no --

18 MS. DEITSCH-PEREZ: Your -- I have to interrupt on  
19 that.

20 THE COURT: You will have your rebuttal time, but let  
21 Mr. Morris finish, please.

22 MR. MORRIS: Mr. Seery owes no duties to Hunter  
23 Mountain and to Dugaboy. He never has. We have an agreement.  
24 The agreement has been affirmed. The merits of that have been  
25 decided multiple times.

1           The Court should continue the stay here. The Court should  
2 allow the District Court, and, if necessary, the Fifth  
3 Circuit, to opine and let it take its course. Right? We're  
4 happy to work as quickly as they want. Not on an expedited  
5 basis, but within the rules. And if they do the same, I think  
6 this will get decided much quicker than they think.

7           In the alternative, Your Honor, if the Court for any  
8 reason wants to lift the stay, we would request 30 days to  
9 file an opposition here, and we will be filing a Rule 11.

10          I do just want to mention one last thing. Because as  
11 counsel pointed out, they filed a so-called supplement at 7:00  
12 p.m. Eastern Time last night on the docket. I was out with my  
13 wife at the theater, and really haven't had any opportunity to  
14 look at this in any detail.

15          I will tell you that I -- Ms. Deitsch-Perez and I emailed  
16 multiple times yesterday. She and Mr. Aigen have been  
17 emailing me multiple times in the last week. No courtesy of a  
18 heads up. No suggestion that maybe we should adjourn this.  
19 No citation in their pleading as to why they think they get to  
20 file a surreply the eve before trial. There's no rule that  
21 allows them to do so.

22          And I would just, you know, just very quickly, Your Honor,  
23 the two cases that they cite are from 2021 and 1998. Those  
24 cases were decided even before Mr. Draper filed his first  
25 motion for valuation information two years ago.

1           The cases are easily distinguishable. They have nothing  
2 to do with statutory trusts. They have nothing to do with the  
3 definition of beneficiaries. They have nothing to do with  
4 Section 3327.

5           But I will say, Your Honor, if, upon reflection, the Court  
6 has any thought that those cases are at all relevant, we would  
7 respectfully request the opportunity to brief it. I don't  
8 think it's necessary. I think the filing was improper. But  
9 even if the Court accepts them, I think those cases are so  
10 easily distinguishable that it won't matter. But if, you  
11 know, it's not fair to be treated this way, to email multiple  
12 times, to give no notice, to file it 15 hours before a  
13 hearing, with no rule citation, with no right to do so, and  
14 expect the Court or expect me, frankly, to be prepared to  
15 fully address it. I've addressed it as best I'm able under  
16 the circumstances.

17           I think the motion to stay should be extended until a  
18 court of competent jurisdiction issues a final nonappealable,  
19 you know, affirmation, determination, on Your Honor's motion  
20 to dismiss the valuation proceeding.

21           THE COURT: All right. Before I hear any last word  
22 from Ms. Deitsch-Perez, I know Mr. Seery's counsel made an  
23 appearance. Is there anything you would like to say?

24           MR. STANCIL: No, Your Honor. I think Mr. Morris  
25 covered it quite well.

1 THE COURT: All right. Ms. Deitsch-Perez, you get  
2 the last word.

3 MS. DEITSCH-PEREZ: Your Honor, I've explained why  
4 this case is different and why a party cannot prevent another  
5 party from gaining rights under a contract. That is the  
6 epitome of breaching the contract by breaching the duty of  
7 good faith and fair dealing which is inherent in the contract.

8 Mr. Morris's argument that, oh, the stay is of no great  
9 moment because you could move expeditiously is incorrect,  
10 because, for example, the delays in the record, that is not  
11 something -- and he well knows, that is not something a party  
12 can control. The Court moves the record and the parties are  
13 stuck with however long that takes. And if one were to look  
14 at the record of the extensions in the appeals, they have --  
15 equally well if not more so than the Debtor's side. And so I  
16 take exception to that.

17 And finally, the Reorganized Debtor is something of a  
18 bully. Every time that they don't like something, there has  
19 been a threat that we're going to seek sanctions. It's a way  
20 of trying to scare lawyers from exercising their duties to  
21 their clients. If he's going to make -- if the Debtor is  
22 going to make a sanctions motion, we'll fight it. We've  
23 fought it before. Sometimes they've threatened it and not  
24 done it.

25 But it is, I will point out, it is itself a violation of

1 Rule 11 to willfully and disingenuously threaten sanctions to  
2 try and prevent litigation. And that's what we think is going  
3 on here. It's a club.

4 If this matter is stayed, Hunter Mountain -- it's no  
5 different than if this Court simply denied the motion, because  
6 the passage of time will eviscerate what's in the estate.

7 Thank you.

8 THE COURT: I'm going to ask this question. I've  
9 asked it before in prior hearings, but I'm asking it again.  
10 And I always am asking it because of, well, a couple reasons.  
11 I've raised the issue of judicial economy and concerns about  
12 the efficient administration of justice and what's in the  
13 interest of the parties. How many appeals do we have pending  
14 or have been made since confirmation of the plan in February  
15 2021? And I'm concerned about judicial economy, yes, but I'm  
16 also --

17 MS. DEITSCH-PEREZ: Your Honor, --

18 THE COURT: Let me -- here is another reason I ask.  
19 It is argued as part of the lawsuit you want to file that Mr.  
20 Seery isn't wrapping things up. But, of course, part of that  
21 hinges on are there appeals still pending. Okay? So I ask  
22 for those two reasons. I don't know if anyone has it at their  
23 fingertips, but it is --

24 MS. DEITSCH-PEREZ: Your Honor?

25 THE COURT: -- germane to everything I've heard here.

1 Okay? So who has --

2 MS. DEITSCH-PEREZ: Your Honor, there --

3 THE COURT: -- the answer at their fingertips?

4 Either one of you?

5 MS. DEITSCH-PEREZ: Your Honor, there are not very  
6 many appeals still pending, but I would point out that some of  
7 these have been successful. That Your Honor's contempt  
8 decision was reversed. The release issue was partially  
9 reversed. So, --

10 THE COURT: Reversed and remanded for me to have  
11 follow-up hearings. So not done, by the way, but anyway,  
12 we'll have a hearing on that remand at some point.

13 MS. DEITSCH-PEREZ: But these are --

14 THE COURT: So, but anyway, the question was how  
15 many.

16 MS. DEITSCH-PEREZ: And I don't know exactly how  
17 many, but there are relatively few. If the issue is how much  
18 money is needed to be set aside for indemnification, there are  
19 relatively few appeals pending.

20 THE COURT: That is a non-answer. Okay?

21 MR. MORRIS: I'm counting, Your Honor.

22 THE COURT: Okay.

23 MS. DEITSCH-PEREZ: I would object to an off-the-cuff  
24 response.

25 MR. MORRIS: I'm counting.

1 MS. DEITSCH-PEREZ: We will follow up with the Court  
2 and give you an exact number.

3 THE COURT: You know what, I --

4 MR. MORRIS: I believe -- I think --

5 THE COURT: My decision today is likely not going to  
6 hinge on the precise answer here. Okay? I'm just asking a  
7 question because I'm worried about judicial economy and what's  
8 efficient, and I'm worried about a lingering continuing  
9 argument that Mr. Seery is not wrapping things up quickly  
10 enough. And I think the answer --

11 MS. DEITSCH-PEREZ: There's not a hundred million  
12 dollars.

13 THE COURT: -- to this question is relevant to both  
14 of those concerns. Having the precise answer, you know, no,  
15 but I'd like a ballpark answer --

16 MS. DEITSCH-PEREZ: Here's the --

17 THE COURT: -- at least, if not precise.

18 MR. MORRIS: Your Honor, the ballpark --

19 MS. DEITSCH-PEREZ: Here's the important answer, Your  
20 Honor.

21 MR. MORRIS: The ballpark --

22 MS. DEITSCH-PEREZ: It's there's not a hundred  
23 million dollars' worth of legal work left to do.

24 THE COURT: I just --

25 MS. DEITSCH-PEREZ: It's --

1 THE COURT: -- asked for the answer to a question,  
2 not an argument.

3 MR. MORRIS: Your Honor?

4 THE COURT: Mr. Morris, do you have an answer?

5 MR. MORRIS: It's approximately 55. But that  
6 includes --

7 MS. DEITSCH-PEREZ: There are not 55 appeals  
8 outstanding.

9 THE COURT: Stop interrupting. I want to hear the  
10 complete answer.

11 Fifty-five is what, the number of notices of appeal ever  
12 filed since the plan was confirmed?

13 MR. MORRIS: There are approximately 55 appeals that  
14 have been filed in the Highland bankruptcy case. Some of  
15 them, admittedly, include both an appeal to the District Court  
16 and then, you know, depending on the outcome there, an appeal  
17 to the Fifth Circuit. So it might involve the same case.

18 THE COURT: Okay.

19 MR. MORRIS: But there have been 55 appeals. Could  
20 be 54, could be 56, something like that.

21 THE COURT: Okay.

22 MR. MORRIS: And there's -- and there's probably --  
23 there's probably at least eight or ten in the pipeline.

24 THE COURT: Eight or ten, do you mean still pending  
25 when you say in the pipeline?

1 MR. MORRIS: Still pending. Either haven't been  
2 briefed at all; they've been briefed and we're waiting for a  
3 court to rule; you know, it's in the District Court so we'll  
4 have to await the outcome there and then see if we go to the  
5 Fifth Circuit. I think there are -- I think we're waiting on  
6 several decisions for the Fifth Circuit. I think there are  
7 three matters in the pipeline in the Fifth Circuit, and  
8 there's probably four or five in the District Court.

9 MS. DEITSCH-PEREZ: Most of which have been largely  
10 briefed, so that we are awaiting decision. It's a small  
11 handful where there's still work to be done.

12 MR. MORRIS: Your Honor, just -- your decision last  
13 week, we don't even have a judge in the District Court. The  
14 notion that this is somehow, you know, on the precipice of  
15 completing litigation, it's just not realistic. I'll just  
16 leave it --

17 MS. DEITSCH-PEREZ: That's not the point. The point  
18 --

19 THE COURT: Look, I've heard about this enough. I  
20 know that sometimes, luck of the draw, you have a judge, let's  
21 say a district judge who doesn't have criminal jury trials  
22 week, week, week, week, week, for the next six months, and  
23 sometimes you have someone who just wrapped up something huge  
24 and can get to an appeal quickly. We're coming up on August  
25 before we know it, when we have changes of law clerks, new law

1 clerks coming in. And just who knows. Nobody can predict.  
2 But I just wanted sheer numbers.

3 And my last question on this is, we technically had a  
4 three-year trust duration, right? And I'm sure this is like  
5 every other one I've ever seen in all these years: There's an  
6 ability to extend the life of the trust. Am I correct that in  
7 August we have a three-year end of trust --

8 MR. MORRIS: Your Honor?

9 THE COURT: -- unless otherwise extended, Mr. Morris?

10 MR. MORRIS: Your Honor, you're exactly right. And  
11 we will be filing a motion, probably in the next week or two,  
12 to continue the trust, precisely because of all of this  
13 litigation will not be resolved on the third anniversary. So  
14 you're exactly right, Your Honor. We're in the process of  
15 drafting it. I can't see how it will be opposed, but I'm sure  
16 it will be.

17 We'll have a chart of all of the outstanding litigation.  
18 Your Honor will see how many pieces of litigation are still  
19 outstanding at that time. But I do expect to file that with  
20 the Court in the next week or two.

21 THE COURT: All right. And I won't get ahead of  
22 myself, but, really, the only thing, I'm guessing, after close  
23 to three years, that is left as far as trust administration is  
24 concluding these lawsuits. Probably all the assets have been  
25 liquidated, right, at this point? Or --

1 MR. MORRIS: You know, I don't know off the top of my  
2 head. I think there are a handful of assets, there may be a  
3 few assets that remain unsold. There's some, you know,  
4 managerial responsibilities over certain funds that we have to  
5 dispose of. But all of that is kind of irrelevant because all  
6 of that, I'm certain, will be completed before the end of the  
7 litigation cycle. You know, like, we can talk about the cases  
8 that are pending, but, you know, we had a new case filed just  
9 recently, right, for leave to remove Jim Seery as Trustee.  
10 And so, you know, if there's -- that's -- we're talking about  
11 the litigation that's pending. We also have to be concerned  
12 with what litigation Mr. Dondero might bring in the future.  
13 And, you know, if he can promise that he'll never bring  
14 another lawsuit, we might have a different view. But, you  
15 know, with the threat of ongoing litigation, yeah, we're just  
16 going to have to continue to husband resources.

17 But back to your specific question of the length of the  
18 trust, we do expect to file a motion shortly to extend the  
19 life of the trust, probably by a year, maybe two, but probably  
20 by a year.

21 THE COURT: Okay. All right. The Court --

22 MR. MORRIS: Your Honor, I really apologize, but I  
23 just have to tell you that I'm really low battery on my  
24 computer. For some reason, my charger is not working. And if  
25 I go blank, you'll know why. I'll switch to my phone.

1 THE COURT: Okay. Thank you.

2 As far as the ruling here today, I will extend the stay of  
3 this what I'll call a contested matter. Even though we don't  
4 have a response to Hunter Mountain's motion for leave to file  
5 the Delaware lawsuit on file yet, I'm calling it a contested  
6 matter that's been initiated by the Hunter Mountain motion.  
7 I'm going to extend the stay on letting the contested matter  
8 go forward until all appeals have been finally exhausted in  
9 connection with this Court's prior orders in which it has  
10 ruled Hunter Mountain does not have stay to either file the  
11 lawsuit -- oh, yes, I'm misspeaking, I meant to say standing  
12 just now when I said stay. The parties know the orders I'm  
13 talking about. Twice now, this Court has ruled that Hunter  
14 Mountain does not have standing to pursue litigation. The  
15 first time was in connection with when Hunter Mountain wanted  
16 to sue claims purchasers Farallon and Stonegate, I think it  
17 was called, Stonehill, and Mr. Seery concerning certain claims  
18 trading that, I'll call it, that happened during the case.

19 I ruled extensively then, and I hear Judge Brown has it on  
20 appeal now, why this Court thought Hunter Mountain did not  
21 have standing under the confirmation order, the plan, the  
22 Claimant Trust Agreement, or Delaware law.

23 And then I understand there's a new appeal when the Court  
24 ruled Hunter Mountain doesn't have standing to pursue a  
25 valuation complaint.

1           So, until all appeals, whether it ends in the District  
2 Court or ends in the Fifth Circuit or I suppose a cert  
3 petition could be filed to the Supreme Court, until all of  
4 those appeals have been exhausted, this matter will not go  
5 forward.

6           I have not been convinced today that the standing issues  
7 now with regard to this newest Hunter Mountain motion are  
8 sufficiently different where I should go forward and hear the  
9 motion for leave.

10           So, as I've alluded to a couple of times, I think it's in  
11 the interests of judicial economy and the efficient  
12 administration of justice and in the interests of the parties  
13 that I continue the stay in effect. I think there are very  
14 real issues that we do have, collateral estoppel and law of  
15 the case and other sorts of estoppel issues that would even  
16 preclude me, should preclude me, from looking at the current  
17 motion for leave.

18           But I will nevertheless look at the four-prong test for  
19 stays that traditionally are applied. Prong #1, whether there  
20 has been a showing of likelihood of success on the merits.  
21 Again, I view that I've already ruled on this, and I've spilt  
22 much ink on this, written well over a hundred pages on this.  
23 And I think there is a likelihood of success on the merits  
24 with regard to the issue of Hunter Mountain not having  
25 standing on appeal.

1 I think there would be certainly harm and injury here,  
2 I'll say irreparable harm, if we had to go through this yet  
3 again, yet again, yet again. The balance of harms certainly  
4 -- well, I don't just find the Reorganized Debtor to be  
5 harmed. Whether Hunter Mountain realizes it or not, everyone  
6 is going to be harmed if more litigation, more expense, is  
7 incurred litigating the same darn thing again. And again,  
8 based on what I've heard today, I don't see it any  
9 differently.

10 The cases that were filed at 7:00 p.m. Central Time last  
11 night, as I said, I wasn't even aware of it. I haven't looked  
12 at them. But they are older cases. It's not like something  
13 hot off the press from last week that Hunter Mountain would be  
14 justified in putting before the Court if it was germane. And  
15 just glancing at them, they don't seem to be relevant to this  
16 situation, where you have a plan that went out on notice,  
17 voting, opportunity for people to object, the Court approved  
18 the plan and the Claimant Trust Agreement in a confirmation  
19 order that was appealed.

20 We have, on top of that, the Delaware law that seemed to  
21 be fairly dispositive that Hunter Mountain is not to be deemed  
22 a beneficial owner of the trust.

23 So it is not in anyone's interest, as far as balancing of  
24 harms here, in this matter going forward, as long as the  
25 issues are primed for an appellate judge to either say you got

1 it wrong, Judge Jernigan, or you got it right. And the public  
2 interest is, I think, in favor of judicial economy and  
3 efficient administration of justice in this regard.

4 So if I go to the four-pronged test, it results in, I  
5 think, the stay being extended here. But, again, this is kind  
6 of a unique animal. I'm not sure that's even the way we  
7 should view it. The way we should view it is I've been asked  
8 again and again and again to rule on this issue. I've ruled  
9 on it -- I say three times because I did a lengthy order on a  
10 motion to reconsider the first time I did an order on this.  
11 So I have done three lengthy rulings on this.

12 I guess I'm just going to say, in closing, and I want this  
13 to be helpful but I'm guessing it might not be: The optics  
14 here, Ms. Deitsch-Perez, look terrible. Terrible. I mean,  
15 how else should it look to the Court? It's just like this has  
16 become a blood sport and the optics make it look like, well,  
17 it's not about justice and fairness. It's taken this very  
18 ugly turn some time ago that let's try --

19 MS. DEITSCH-PEREZ: We agree the --

20 THE COURT: -- let's try to destroy Mr. Seery. What  
21 else is a rational judge supposed to think?

22 MS. DEITSCH-PEREZ: Your Honor, Mr. Seery --

23 THE COURT: Now it's gotten to the point of raising  
24 the same issue again and again and again. And guess what. If  
25 this was going forward, if there was not going to be a stay in

1 place, I would be inclined to consider Rule 11 sanctions. How  
2 many times is it proper for a party to keep asking for the  
3 same thing again and again? You know, we'll use a different  
4 counsel this time. We'll say it's different this time. It's  
5 not different.

6 MS. DEITSCH-PEREZ: Your Honor, it is different, and  
7 Mr. Seery -- and put it -- take it away from Mr. Seery. The  
8 Claimant Trustee is the fiduciary for the parties who may  
9 benefit ultimately from the Claimant Trust. And so they have  
10 a right to make sure that the Claimant Trustee is not  
11 preventing their rights from vesting. It is a perfectly  
12 legitimate exercise. It is a perfectly legitimate endeavor.

13 And the optics do look bad. It looks like that the estate  
14 is doing everything it can to prevent scrutiny of that.

15 So we agree the optics are bad, but in exactly the  
16 opposite way. If there were transparency here, if we could  
17 actually get a trustee who doesn't have this conflict, this  
18 case could be resolved.

19 THE COURT: The 55 appeals, eight or ten of which are  
20 still in the pipeline. Relatively few, as you said. But we  
21 are three years post-effective date. That was the optics I'm  
22 talking about. There is no reason for this case not to be  
23 over except for this. That's the optics I'm talking about.

24 And it's one thing to legitimately exercise your right to  
25 appeal, a party's right to appeal when they disagree. God

1 bless America. That's what our judicial system is about. But  
2 when you start bringing the same motion again and again and  
3 again, that is definitely Rule 11 territory and definitely  
4 affects credibility. Okay?

5 Mr. Morris, if you're still there, please upload a simple  
6 form of order reflecting what the Court ruled today.

7 We are adjourned.

8 MR. MORRIS: I am. Thank you. Thank you, Your  
9 Honor.

10 THE CLERK: All rise.

11 (Proceedings concluded at 11:18 a.m.)

12 --oOo--

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CERTIFICATE

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22

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

23

**/s/ Kathy Rehling**

**06/13/2024**

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\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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

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	)	<b>Case No. 19-34054-sgj-11</b>
In Re:	)	Chapter 11
	)	
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	February 14, 2024
	)	9:30 a.m. Docket
Reorganized Debtor.	)	
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DUGABOY INVESTMENT TRUST,	)	<b>Adversary Proc. 23-3038-sgj</b>
et al.,	)	
	)	
Plaintiffs,	)	
	)	THE HIGHLAND PARTIES' MOTION
v.	)	TO DISMISS COMPLAINT [13]
	)	
HIGHLAND CAPITAL	)	
MANAGEMENT, L.P., et al.,	)	
	)	
Defendants.	)	
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   DALLAS, TEXAS - FEBRUARY 14, 2024 - 9:33 A.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, The Honorable Stacey Jernigan presiding.

5                   THE COURT: Good morning. Please be seated. All  
6 right. We have a setting this morning in the adversary styled  
7 Dugaboy Investment Trust and Hunter Mountain Investment Trust  
8 versus Highland, Adversary 23-3038.

9                   We have the Highland Parties' motion to dismiss the  
10 adversary.

11                   Who is appearing for the Movant, Highland?

12                   MR. MORRIS: Good morning, Your Honor. It's John  
13 Morris from Pachulski Stang Ziehl & Jones for the Movant.

14                   THE COURT: All right. Thank you. And who do we  
15 have appearing for Plaintiffs/Respondents?

16                   MS. DEITSCH-PEREZ: Good morning, Your Honor. It's  
17 Deborah Deitsch-Perez from Stinson.

18                   THE COURT: All right.

19                   MS. DEITSCH-PEREZ: And I would ask: Is anybody else  
20 having a little trouble hearing? The volume seems lower than  
21 usual here.

22                   THE COURT: All right. It's loud and clear for the  
23 Court. What about you, Mr. Morris?

24                   MR. MORRIS: It's no problem for me, Your Honor.

25                   THE COURT: Okay.

1 MS. DEITSCH-PEREZ: Okay. I'll just listen hard.

2 THE COURT: All right. Well, I assume these are the  
3 only appearances we have.

4 As a reminder to folks on the WebEx, if you're a party in  
5 interest, fine, you can use both video and audio. But if you  
6 are not a case party in interest, the rules from Washington  
7 say it's supposed to be only an audio listen-in format for  
8 you.

9 All right. So let me quickly talk about our time issues.  
10 I have to give a CLE presentation on the other side of  
11 downtown at 12:00 noon today, so I really need to stop at  
12 about 11:30 or 11:35. You all have given a two-hour time  
13 estimate, so do you all think that is what you're going to  
14 need, an hour each?

15 MR. MORRIS: I do, Your Honor. I don't know that  
16 I'll need all that time, but I'll try and limit my opening  
17 remarks to 45 minutes and save 15 for rebuttal.

18 THE COURT: All right. What about you, Ms. Deitsch-  
19 Perez? Any issues there?

20 MS. DEITSCH-PEREZ: I would say the same.

21 THE COURT: Okay. Very good. Well, with that, Mr.  
22 Morris, I'll hear from you.

23 OPENING STATEMENT ON BEHALF OF THE MOVANTS

24 MR. MORRIS: Thank you, Your Honor. John Morris;  
25 Pachulski Stang Ziehl & Jones; for the Movant, Highland

1 Capital.

2 Your Honor, in the famous words of an old New Yorker, Yogi  
3 Berra, this is déjà vu all over again. Less than eight months  
4 ago, this Court issued rulings that held that HMIT was not a  
5 Claimant Trust beneficiary because its contingent interests  
6 have not vested. This Court ruled that HMIT was not in the  
7 money. This Court ruled that HMIT's rights as a contingent  
8 trust holder were determined solely with reference to the  
9 Claimant Trust agreement, and under the Claimant Trust  
10 agreement's clear and unambiguous provisions, they have no  
11 rights today.

12 Now, in their complaint, HMIT and Dugaboy basically ask  
13 for the same relief that they sought last year. They want  
14 information for the purported purpose of establishing that  
15 they are in the money, even though they told this Court last  
16 summer, based on available information, that they were in the  
17 money. They want a declaration that the value of trust assets  
18 exceeds the value of the trust liabilities, and they want a  
19 declaration that their contingent interests are likely to  
20 vest.

21 And I'll talk more about this in a moment, but it's really  
22 interesting, if you look at the last footnote of their  
23 complaint, they expressly ask the Court not to rule as to  
24 whether or not they are Claimant Trust beneficiaries. They  
25 only want the Court to rule in a declaratory judgment that

1 they're likely to vest. We'll talk about that more in a  
2 minute.

3 We need clear rulings on each of these matters, on each of  
4 the bases for which Highland moves to dismiss this complaint,  
5 because, you know, obviously, saying it once or twice hasn't  
6 been enough, so we need to say it one more time, loudly and  
7 clearly.

8 I've got a deck that I'll ask Andrea Bates to put up on  
9 the screen. I hope to go through it fairly quickly.

10 THE COURT: Okay.

11 MR. MORRIS: Ms. Bates, if you can put our deck up,  
12 please.

13 And I'd like to begin, once it's on the screen, just going  
14 through the three counts of the complaint. These are the  
15 counts that we're seeking to dismiss. They're -- they are,  
16 frankly, fairly straightforward.

17 (Pause.)

18 MS. BATES: Apologies. I got kicked out of the  
19 WebEx.

20 MR. MORRIS: Okay. (Pause.) Okay, great. If we can  
21 go to the next slide, please.

22 So, the first count, Your Honor, the first count of the  
23 complaint seeks the disclosure of trust assets and accounting,  
24 and an accounting. In Paragraph 83, they make it clear, they  
25 say, due to the lack of transparency into the assets of the

1 Claimant Trust, Plaintiffs are unable to determine whether the  
2 contingent Claimant Trust interests may vest into Claimant  
3 Trust interests. That's really an important allegation,  
4 because it's a concession. And there are other concessions.  
5 If you look at Paragraph 66, for example, it's a concession  
6 that they're not Claimant Trust beneficiaries. They know  
7 that. Right? No dispute. But they're seeking information to  
8 determine whether they may vest. That's what they're asking  
9 for.

10 And the next piece of this slide is also important because  
11 they're not just asking for information about assets and  
12 liabilities. They're asking for "details of all transactions  
13 that have occurred." Even under their theory of trying to  
14 figure out if they're in the money, why could that possibly be  
15 relevant? Details of transactions that have occurred. You  
16 know, Your Honor, we were here before the Court last spring on  
17 the mediation motion, and I recall Your Honor specifically  
18 asking Ms. Ruhland, what information? Because they were  
19 seeking information then for the mediation. What information  
20 could you possibly need other than assets and liabilities?  
21 And she didn't really have an answer.

22 Your Honor asked us -- and ordered us, frankly -- to  
23 produce that information, and we did. And that's the  
24 information that we'll talk about in a moment that HMIT relied  
25 upon to represent to the Court that it believed that the

1 entity was in the money.

2 But the important point here is why are they asking for  
3 details about transactions that have occurred? It's just a --  
4 it's just -- when we talk about the equities at the end, I'm  
5 going to come back to that.

6 The important point here for Count One, Your Honor, they  
7 don't cite to or rely on any provision of the plan. They  
8 don't cite to or rely upon any provision of the Claimant Trust  
9 agreement. They don't cite to or rely upon any statute. This  
10 is a purely equitable claim.

11 If we can go to the next slide, please.

12 Count Two seeks a declaratory judgment concerning the  
13 value of the assets relative to the liabilities, but it's a  
14 conditional request. It requires that the Defendants be  
15 compelled to provide the information. And that's what it says  
16 in Paragraph 90. And it flows from that, according to them,  
17 that if assets exceed liabilities, all kinds of great things  
18 are going to happen. All affirmative proceedings can be  
19 deemed unnecessary. The bankruptcy court -- case can be  
20 brought to a close, and the bloodshed will stop.

21 But what's really interesting about this, and it portrays  
22 the intent of Hunter Mountain in this proceeding, is that they  
23 only want the affirmative proceeding to stop. If you look at  
24 Paragraph 91, and it's quoted there in the footnote, they only  
25 want pending adversary proceedings and get recovering value of

1 the HCMF -- HC -- the Highland estate.

2 So, presumably, they'll be allowed, right, they'll get  
3 paid. All creditors, according to them, if assets exceed  
4 liabilities, they get paid. And then all of the indemnified  
5 parties have nothing to use to defend themselves under the  
6 indemnities. That's what they're looking to do. It's really  
7 clear. And the Court should understand that they're not  
8 really ambiguous here. They want to look at all of the  
9 transactions. They want to, even under their theory that  
10 Class 8 and Class 9 should get paid, they should get  
11 everything else, there should be nothing left, and they should  
12 be able to continue to sue Mr. Seery and the Reorganized  
13 Debtor and the Claimant Trust and my firm from now until the  
14 end of time. That's the motivation here.

15 Let's look at Count Three. Count Three, they want a  
16 declaratory judgment regarding the nature of their interests  
17 in the Claimant Trust. But not really. But not really. What  
18 they want is a declaration and a determination that there are  
19 conditions, that the conditions are such that the contingent  
20 interests are "likely to vest." Again, if you look at the  
21 footnote, and we'll look at it in detail, they're again not  
22 asking the Court, because they know what the answer is going  
23 to be, they're not asking the Court to find that they are  
24 Claimant Trust beneficiaries, just that they are likely to  
25 vest at some point in the future.

1           They don't cite to or rely upon any provision of the plan.  
2           Again, they don't cite to or rely upon any provision in the  
3           Claimant Trust agreement or in any statute. It's a purely  
4           equitable claim.

5           If we can go to the next slide.

6           The terms of the Claimant Trust agreement determine when  
7           and if Plaintiffs are Claimant Trust beneficiaries, full stop.  
8           Under the Delaware Statutory Trust Act, whether a party is a  
9           beneficiary here, a Claimant Trust beneficiary, is determined  
10          by the plain language of the governing instrument -- here, the  
11          Claimant Trust agreement. And the plan, frankly, because the  
12          plan provisions matter in Articles III and IV. They also  
13          provide the same conditions for vesting.

14          We cited in our papers a case called *Paul Capital*  
15          *Advisors*. *Paul Capital Advisors* is from the Delaware Chancery  
16          Court. And what's really interesting about that case, Your  
17          Honor, is in that case the plaintiff was seeking to remove a  
18          trustee. A lawyer by the name of Michael Hurst defended that  
19          case, and Mr. Hurst -- who's a -- Mr. Ellington's counsel  
20          today; he was before Your Honor in December on the Ellington  
21          stalking matter; he's a longtime lawyer for Mr. Dondero -- Mr.  
22          Hurst actually urged the court to dismiss the case on the  
23          grounds that the plaintiff wasn't a beneficiary under the  
24          plain terms of that trust agreement. And the court granted  
25          the motion to dismiss, just like the Court should grant the

1 motion to dismiss today.

2 So one of Mr. Dondero's own lawyers was in the Delaware  
3 Chancery Court making the exact same argument that we're  
4 making today, and that is, even referring to the *Restatement*,  
5 a trust's beneficiaries are the people who are defined as  
6 beneficiaries in the trust governing documents or that are  
7 otherwise reflective of the settlor's intent. That's what  
8 *Paul Capital Advisors* holds.

9 Here, the settlor specifically decided to exclude HMIT and  
10 Dugaboy as holders of the Class 10 and 11 claims from the  
11 definition of Claimant Trust beneficiaries. We know that.  
12 We're going to look at that language in a moment.

13 The Claimant Trust agreement includes very specific  
14 provisions concerning vesting, none of which refer to,  
15 concern, or are dependent on the value of the trust assets and  
16 liabilities at any moment in time.

17 Being in the money is legally irrelevant under the plain  
18 terms of the plan and under the plain terms of the Claimant  
19 Trust agreement and on the plain terms of the case that Mr.  
20 Hurst successfully argued in the Delaware Chancery Court known  
21 as *Paul Capital Advisors*.

22 If we can go to the next slide.

23 Let's look at the provisions. Let's see. Right? Because  
24 one of the bases for the motion to dismiss is that they have  
25 no rights under the plan. Neither Hunter Mountain nor Dugaboy

1 have any rights under the plan. And, you know, if you follow  
2 *Capital Advisors*, and, really, just as the Court did last  
3 summer when it decided, I think properly and appropriately,  
4 that Hunter Mountain and Dugaboy's rights are determined  
5 solely under the provisions of the plan, let's just look at  
6 those provisions.

7 The Claimant Trust agreement, in Section 3.12,  
8 specifically says that the agreement doesn't require the  
9 Claimant Trustee to file any accounting. That's the reasoning  
10 sought in Count One. Can't do it. No. Right? There's no  
11 obligation to do it.

12 If we can go to the next slide.

13 Section 3.12(b) provides -- requires the Claimant Trustee  
14 to provide quarterly reporting to Oversight Board and Claimant  
15 Trust beneficiaries. Again, no allegation that Hunter  
16 Mountain or Dugaboy is an Oversight Board member. No  
17 allegation that they're Claimant Trust beneficiaries. In  
18 fact, the whole purpose of the complaint, supposedly, is to  
19 get information so that they can determine whether or not  
20 they're likely to vest.

21 So, there's a concession that they're not Claimant Trust  
22 beneficiaries. And so only those two groups of people,  
23 Oversight Board members and Claimant Trust beneficiaries, are  
24 entitled to receive these quarterly reports. And because  
25 Hunter Mountain and Dugaboy don't fall into either group, they

1 have no rights under Section 3.12(b).

2 Just to make it abundantly clear -- if we go to the next  
3 slide -- let's look at the definition of Claimant Trust  
4 beneficiary. Again, this is right out of the Claimant Trust  
5 agreement, Section 1.1(h). And it says, holders of allowed  
6 general unsecured claims or allowed subordinated claims, and  
7 only upon the certification of the Claimant Trustee that all  
8 holders of claims have been paid indefeasibly in full. That's  
9 a reference to Class 10 and 11 with the holders of the former  
10 limited partnership interests. Only then do they vest.  
11 That's how they vest. You've got to file this certification  
12 saying that everybody has been paid in full.

13 And they say, oh, gee, well, if assets exceed liabilities,  
14 that must mean they're in the money and the Trustee should  
15 just pay them in full.

16 But that's not what that trust agreement says. And let's  
17 be clear. The trust agreement and the plan were adopted and  
18 confirmed by this Court more than three years ago now. It was  
19 the first week of February 2021. Those documents were subject  
20 to appeal, but nothing we're talking about today is -- was  
21 ever the subject of appeals. Right? So these are the  
22 agreements. They're sacrosanct. The Delaware Chancery Court  
23 says you've got to follow the agreement. So let's do that.

24 If we can go to the next slide.

25 Distributions. So, right, the Claimant Trustee has to

1 certify that everybody has been paid in full. But what about  
2 distributions? When are they going to get paid in full?  
3 According to the plain and unambiguous terms of the Claimant  
4 Trust agreement, the Claimant Trust agreement shall distribute  
5 to holders of trust interests at least annually the cash on  
6 hand -- here's the important word: net -- net of any amounts  
7 that, among other things, if you go down to (d), are necessary  
8 to satisfy or reserve for other liabilities incurred or  
9 anticipated by the Claimant Trustee, in accordance with the  
10 plan and this agreement, including but not limited to  
11 indemnification obligations.

12 So it doesn't matter if assets exceed liabilities. We  
13 don't believe that they do. We don't believe that there is  
14 any reason to even engage in the debate. And the reason for  
15 that is because we've got substantial indemnification  
16 obligations that must be reserved for. And if -- and -- and  
17 -- we'll talk about that more in a moment.

18 But that's the key. That's the key here. They don't  
19 vest. Right? Class 10 and 11 does not vest until the  
20 Claimant Trustee certifies that everybody has been paid in  
21 full. And nobody is going to be paid in full as long as the  
22 Claimant Trust has indemnification obligations that must be  
23 satisfied. The Claimant Trustee is a fiduciary. He owes the  
24 beneficiaries of indemnification rights the duty to make sure  
25 that the Claimant Trust has sufficient assets to satisfy the

1 indemnification obligations.

2           And do you know who's not here today, Your Honor? Any  
3 Claimant Trust beneficiary. Any Claimant Trust beneficiary  
4 who would -- there is nobody here complaining that Mr. Seery  
5 is abusing his rights. There's no -- nobody is complaining  
6 that he should be distributing the cash. Nobody is  
7 complaining that, you know, he's overwithholding. And we'll  
8 talk more about why, actually, what he's doing is proper,  
9 although that's not an issue before the Court today. The only  
10 issue before the Court, frankly, is Section 6.1. And it says  
11 the trust must reserve amounts necessary or deemed necessary  
12 to satisfy indemnity obligations.

13           If we can go to the next slide, please.

14           So now let's get to the motion to dismiss itself now that  
15 we have an understanding of exactly what the Claimant Trust  
16 agreement and the plan provide. Let's look back at what the  
17 Court did. The Court issued two very important rulings last  
18 year on these very issues. And in the Court's lengthy  
19 decision on the Hunter Mountain motion for leave, the Court  
20 concluded, quote, HMIT's status as a beneficiary of the  
21 Claimant Trust was designed by the Claimant Trust agreement  
22 itself, pure and simple. The Court was right then, and the  
23 Court will be right today when presumably it stands by its  
24 prior ruling.

25           Under the Claimant Trust agreement, contingent trust

1 interests have no rights until they vest. And there's no  
2 dispute that they have not vested because the Claimant Trustee  
3 has not filed a certification that everybody is getting paid  
4 in full. That's what the language of the document says. We  
5 really are done here.

6 But there's more, because after that hearing Hunter  
7 Mountain made another motion and said, wait, Your Honor, those  
8 disclosures that you required Highland to make in support of  
9 mediation, they show we're in the money. They've already  
10 swung and they've missed at this. They said, oh, we're in the  
11 money. And Your Honor, unlike HMIT, actually read the  
12 disclosures and actually saw all of the contingencies in  
13 there.

14 It's ironic that HMIT, of all people, would be telling the  
15 Court that they're in the money when their beneficial owners  
16 are actually appealing the \$70 million Notes Litigation, when  
17 their beneficial owners are playing fast and loose with the  
18 value of assets that they control, such as HCRE. Right? But  
19 they're still here with the same tired story, maybe we're in  
20 the money.

21 Your Honor, you've ruled on this and we're done, as far as  
22 I'm concerned. You found, among other things, that they  
23 failed to give proper attention to the notes to the financial  
24 statements that were integral to understanding the numbers. I  
25 hope that they've done that now.

1 Your Honor ruled that they failed to take into account the  
2 widespread litigation that's caused massive indemnification  
3 claims and legal fees, all of which must be satisfied.

4 Based on this Court's decision less than five months ago  
5 -- I think it was actually eight months ago -- Counts One and  
6 Three are moot and they're otherwise barred by collateral  
7 estoppel.

8 If we can go to the next slide, please.

9 Count Two must also be dismissed because it depends on  
10 Highland being "compelled to provide information about the  
11 Claimant Trust assets." That's in Paragraph 90. So if the  
12 Court doesn't compel Highland, the Court has no ability to  
13 make the declaration that's sought.

14 But even if you could, right, there's -- Plaintiffs have  
15 no legally cognizable right. They don't cite to anything.  
16 They don't have an equitable claim to compel Highland to  
17 provide trust -- the information. There is no underlying  
18 controversy to be resolved. They have no right to this  
19 information. They have no equitable claim to this  
20 information.

21 As we set forth in Paragraph 39 of our moving brief, they  
22 can't come here seeking equity that's barred by the plain  
23 terms of the trust agreement. The trust agreement, again,  
24 reflects the settlor's intent. The settlor intended that he  
25 would provide or that the Claimant Trustee would provide

1 limited information to the claimant board members and Claimant  
2 Trust beneficiaries, of which neither Hunter Mountain nor  
3 Dugaboy are one. They can't use equity to just override the  
4 very plain meaning of the operative documents and the intent  
5 of the settlor.

6 The Claimant Trust agreement is determinative. Since the  
7 value of the trust assets and liabilities at any moment in  
8 time is irrelevant to the question of vesting, there is no  
9 justiciable controversy to resolve.

10 So, two reasons. I don't think the Court can order  
11 Highland to produce any information, so it fails for that  
12 reason. And even if it did, the whole issue is completely  
13 irrelevant, given the plain terms of the trust agreement and  
14 the plan, so there is no justiciable controversy.

15 If we can go to the next slide.

16 Some other grounds to dismiss Count One. Right? Again,  
17 no legal right to the information or an accounting. Again,  
18 the request for equitable relief is barred by the plain terms  
19 of the trust agreement since they're not Claimant Trust  
20 beneficiaries.

21 And it's worth noting, as I mentioned earlier when we saw  
22 the very provision in the trust agreement, even Claimant Trust  
23 beneficiaries have no right to an accounting, or any right to  
24 any information beyond that provided in Section 3.12. But,  
25 again, I don't want to suggest that Hunter Mountain or Dugaboy

1 have any entitlement. It's just to contrast where actual  
2 trust beneficiaries lie vis-à-vis Hunter Mountain and Dugaboy.

3 If we can go to the next slide.

4 Other grounds to dismiss Count Three. Again, in Count  
5 Three, Plaintiffs seek a declaration as to whether or not the  
6 Claimant Trust beneficiaries may be indefeasibly paid and  
7 whether the conditions are such that their claimant -- you  
8 know, contingent Claimant Trust interests are likely to vest  
9 into Claimant Trust interests, making them Claimant Trust  
10 beneficiaries, yet another admission that they're not Claimant  
11 Trust beneficiaries today.

12 These are inquiries that would require the Court to, among  
13 other things, handicap the likelihood of Mr. Dondero's appeal  
14 in the Notes Litigation and the amount that is going to be  
15 needed to satisfy future indemnity obligations.

16 I have a reference in this bullet to Docket No. 3880.  
17 Your Honor, that's the other piece of information that I think  
18 the Court required Highland to produce in connection with the  
19 mediation, where we identified all of the outstanding  
20 litigation that we have. You know, we are here today. I was  
21 in Dallas two weeks ago before Judge Scholer to have oral  
22 argument on the Advisors' appeal of the judgment that was  
23 entered in favor of Highland and against them a couple of  
24 years ago.

25 We obviously had a lot of paperwork to deal with on the

1 motion for leave, you know, to sue my firm that was withdrawn  
2 in the face of a Rule 11 motion.

3 You know, these are all things that weren't even on that  
4 list. We've got the appeal now of the original Hunter  
5 Mountain decision. Again, with so many issues on appeal, I  
6 don't even know if the District Court will ever get to the  
7 standing question, because there's like literally dozens of  
8 issues on appeal.

9 We were in Houston last week for a Fifth Circuit argument  
10 on Your Honor's order conforming the plan to the original  
11 Fifth Circuit decision on confirmation.

12 All of these things are expensive. Mr. Dondero is famous  
13 for complaining about how expensive this is, and yet he  
14 continues to drive these costs. This hearing is making it  
15 much less -- it's making it less likely that he's ever going  
16 to be in the money. Every time we have another court  
17 appearance, every time he files another complaint, every time  
18 he, you know, does things to cause us to spend money, his  
19 being in the money -- not that it's legally relevant; I don't  
20 want to make any suggestion that it is -- but that's why we  
21 need these indemnification reserves, because there is no end  
22 in sight.

23 We do have a vexatious litigant motion, Your Honor.  
24 Hopefully, that will be successful. Hopefully, that will  
25 curtail things in the future. But, you know, remains to be

1 seen. That's just something that we feel we need to do.

2 The Plaintiffs tacitly admit that these requests are for  
3 impermissible advisory opinions. Obviously, they are. Any  
4 time you're asking the Court to make a determination about  
5 what's likely to happen in the future that has no legal  
6 significance whatsoever, it's an advisory opinion.

7 And, again, this is what I referred to earlier. If you  
8 look at Footnote 6 to Paragraph 94 of the complaint, oddly,  
9 they don't ask the Court to determine that they're Claimant  
10 Trust beneficiaries. Maybe it's because they've already  
11 admitted that they're not. I don't know. They're not asking  
12 the Court to convert their contingent interests into  
13 noncontingent interests. Again, maybe because they're -- it's  
14 an acknowledgement and an admission that that can't happen.  
15 But here's the tell, because those issues must be done in  
16 accordance with the plan and the CTA. We agreed. There's no  
17 dispute. There is no judiciable, justiciable dispute here.  
18 We agreed that all of these issues are decided by the plain  
19 terms of the plan.

20 I think that's my last slide, so you can take this down.

21 I just briefly want to finish up with just some  
22 observations about equities. As a matter of law, equity can't  
23 trump contractual terms. But if for some reason the Court  
24 even wanted to consider the question, I would ask the Court to  
25 take very seriously Hunter Mountain and Dugaboy's pleadings

1 where they're asking not for information regarding assets and  
2 liabilities, but they want a review of all of the prior  
3 transactions. They want to second-guess everything the  
4 Claimant Trustee has done to date. That smells. Right? And  
5 it's not the first time we've dealt with this issue. You  
6 know, Your Honor can take judicial notice of their pleadings  
7 in the Fifth Circuit when they were appealing that 2015.3  
8 ruling. They explicitly told the Fifth Circuit they want  
9 information so that they can bring more claims. Right?

10 So there's not a good faith basis for this. There's not a  
11 legal basis for it. There's not an equitable basis for it.  
12 The Court has ruled on these issues multiple times already.  
13 There is no judiciable controversy before the Court. And for  
14 all of those reasons, the Court should just dismiss this  
15 complaint.

16 I have nothing further, Your Honor.

17 THE COURT: All right. Mr. Morris, you referred to  
18 the list of pending matters. And last night at 10:00 o'clock  
19 in bed, I meant to pull this up because it was referred to in  
20 one of the pleadings as well, and I didn't do it. Could you  
21 tell me the docket entry that appears at?

22 MR. MORRIS: Yeah, I think it's 3880. I apologize.  
23 I'm actually looking at my phone. I wouldn't typically do  
24 this, but I'm going to see if I can quickly find that. But I  
25 believe it's 3880.

1 THE COURT: Okay.

2 (Court confers with Clerk.)

3 THE COURT: Okay. All right. Ms. Deitsch-Perez?

4 OPENING STATEMENT ON BEHALF OF RESPONDENTS

5 MS. DEITSCH-PEREZ: Thank you. This adversary  
6 proceeding actually has deep roots. It was started by motion  
7 a long time ago, long before that balance sheet was filed.  
8 And it was done because the Claimant Trustee and the estate  
9 have consistently obscured the available resources in order to  
10 make it harder for the residual equity holders to investigate  
11 whether the estate has been mismanaged, to their detriment.

12 THE COURT: Did you say --

13 MS. DEITSCH-PEREZ: Mr. Morris talked --

14 THE COURT: Can I -- you said they've obscured the  
15 resources?

16 MS. DEITSCH-PEREZ: Yes. They've obscured what's in  
17 the estate. If you -- we'll look more closely at that balance  
18 sheet, Your Honor. In addition to not having filed the 2015  
19 reports, the balance sheet, you're right, has a number of  
20 notes on it. But the notes -- and we'll look at those and go  
21 through them -- don't -- don't -- aren't illuminating. If you  
22 look at the face of the balance sheet, there is enough money  
23 to pay everybody and have money left over.

24 You have to rely on obscure, undetailed notes and  
25 assertions and assumptions to say maybe, maybe there won't be

1 money left over. But on the face of the balance sheet, there  
2 is enough money to pay everybody.

3 And if there's enough money to pay everybody, the leftover  
4 money is HMIT's. It's not -- it's not the professionals'.  
5 It's not the Claimant Trustee's. What's being used now is the  
6 residual -- old residual equity's money.

7 So Mr. Morris brought up mediation, and that was an  
8 interesting point, because in the papers, arguing about  
9 whether or not Your Honor should grant mediation, the estate  
10 and Mr. Seery made it very clear there would only be a  
11 resolution if there were complete and total releases given and  
12 all litigation stopped. So that was clear. We understood  
13 that. And what was at stake, obviously, in any mediation is  
14 what's left. So, what are the residual -- what's the  
15 residual?

16 But if we can't find out what the residual is and we can't  
17 find out what actually is being released, this estate can't  
18 ever end. It's not the Plaintiffs here who are keeping the  
19 engine going. It's the Defendants, because they know exactly  
20 how to push the buttons to raise suspicions about whether  
21 something untoward has gone on.

22 And so let me test the premise of the Defendants here with  
23 a hypothetical. Because, remember, Defendants arguments for  
24 dismissal turn on the contention that the Claimant Trust  
25 agreement prevents Plaintiffs from being considered

1 beneficiaries, no matter how much money the Claimant Trust has  
2 -- or squandered, for that matter -- if Mr. Seery doesn't  
3 authorize payment of Class 8 and 9 creditors in full and  
4 affirmatively certify that Classes 10 and 11 are  
5 beneficiaries. So, unless he does that, it's the Defendants'  
6 position Plaintiffs have no means of redress.

7       So let's test that with a hypothetical. Let's say that  
8 Mr. Seery, let's say that the Claimant Trustee, to keep  
9 earning his \$150,000 a month indefinitely, massively  
10 overspends professional fees to justify an objectively  
11 unreasonable indemnity reserve of \$125 million. And let's say  
12 he deliberately dribbles out payments to Class 8 and 9 so that  
13 eventually the combination of interest, administration, and  
14 professional fees is sufficient to eliminate the amounts that  
15 would otherwise be payable to the last dollar of 8 and 9, much  
16 less Classes 10 and 11.

17       And let's make the hypothetical even more extreme. What  
18 if Mr. Seery moved money into the Indemnity Subtrust and paid  
19 it to phantom vendors? I'm not saying he did that. I don't  
20 want stories about how we're accusing him of something. This  
21 is a hypothetical. But let's say he did that. He put it in  
22 the subtrust, paid it to phantom vendors, who kicked it back  
23 to him, in order to keep the amount low enough to pay the last  
24 dollar to Classes 8 and 9.

25       Under the Defendants' theory here, that can't ever be

1 discovered, much less remedied. And so that's why, that's why  
2 there is an equitable argument here, and a practical argument,  
3 Your Honor.

4 Because Your Honor has said you want this to end. This  
5 has to end. Well, the only way it can end is if there's  
6 sunshine, if there's enough disclosure and investigation so  
7 everybody can get comfortable that releases are appropriate  
8 and the money that could be left is left there, and then  
9 everybody can go home. Because we are all really tired of  
10 this. But it's the Defendants that are keeping it going.

11 THE COURT: Let me interrupt you. There are many  
12 jurisdictional arguments, as you all know. Many issues for  
13 this Court, legal issues here. But here are two things that  
14 stand out above all. And one is do the Plaintiffs have a  
15 contractual right to the information they seek or not. Why  
16 should the Court look beyond the Creditor Trust agreement, the  
17 plan, the confirmation order, which are final? These issues  
18 were never complained about. There's not enough transparency  
19 in the trust agreement language: No one ever made that  
20 argument. It's not on appeal.

21 So, again, many jurisdictional arguments here, but why  
22 should I ignore clear contractual terms here? It almost feels  
23 like modifying the plan three years down the road. So --

24 MS. DEITSCH-PEREZ: It's not --

25 THE COURT: So, --

1 MS. DEITSCH-PEREZ: I'll say it's not, Your Honor.  
2 It's not, Your Honor, because under Delaware law and under the  
3 good faith and fair dealing, every contract in Delaware --  
4 we're not in -- it's not a Texas contract -- in Delaware,  
5 there's a covenant of good faith and fair dealing. And when a  
6 party to a contract actually does things that prevent someone  
7 else from obtaining the benefits under the contract, then you  
8 don't read the contract literally, you read it to prevent the  
9 wrongdoer from getting the benefit of their wrongdoing. And  
10 that's --

11 THE COURT: Okay.

12 MS. DEITSCH-PEREZ: That's the reason Your Honor can  
13 and must allow this case to go forward. Because, otherwise,  
14 there is a terrible, terrible law that's being created. It  
15 enables somebody to --

16 THE COURT: Well, you say it's terrible law, but,  
17 again, the trust agreement was out there for consumption  
18 before the confirmation hearing. And your clients --

19 MS. DEITSCH-PEREZ: Well, --

20 THE COURT: -- or others could have come in and said,  
21 this just doesn't work, this lack of transparency, this lack  
22 of oversight, this lack of access to information. And you  
23 didn't.

24 MS. DEITSCH-PEREZ: Your Honor, who would have  
25 thought that the --

1 THE COURT: And not only that, but this is not -- I  
2 have no reason to believe this is atypical language. In the  
3 dozens if not hundreds of post-confirmation liquidating trust  
4 agreements I've seen, it looks like standard fare.

5 MS. DEITSCH-PEREZ: Your Honor, there is no -- no one  
6 could have contemplated at the time that we would be in the  
7 situation that we are now, with information not having been  
8 provided. Many Chapter 11s are much more cooperative.  
9 They're not liquidations. They're reorganizations. They're  
10 -- people are trying to end the estate, so they're sharing  
11 information. This is not a circumstance that could have been  
12 contemplated. And Your Honor can do something about it now.

13 THE COURT: Well, which brings me to my second sort  
14 of overarching issue that stands out, of all the different  
15 issues. And these are my own words more than anything I think  
16 I've read. It feels like what you're asking for, if there's a  
17 jurisdictional way to get there, if there's a legal way to get  
18 there, it feels like it would be a meaningless exercise,  
19 because the value in the trust is going down daily. It's  
20 going down hourly, as we speak. The value I could determine,  
21 if this goes to trial, would be completely meaningless a  
22 month, two months, five months, three years later, because of  
23 all the litiga...

24 MS. DEITSCH-PEREZ: Your Honor, but on that theory --

25 THE COURT: Please don't interrupt until I finish. I

1 want to make sure my point is clear. My law clerk --

2 MS. DEITSCH-PEREZ: Okay.

3 THE COURT: -- did bring in to me the list --

4 MS. DEITSCH-PEREZ: I understand.

5 THE COURT: -- the list of litigation. And even  
6 this, if we pulled up the right one, it's several months old,  
7 so even this is very dated.

8 But let me put it in very plain terms. It kind of feels  
9 like your client is its worst enemy in getting this relief,  
10 because your client, because of the fifty-something appeals  
11 and because of the motions for leave to bring litigation, is  
12 causing the value of this trust to plummet. And we're never  
13 -- it seems like a meaningless exercise. I'll never be able  
14 to make a declaratory judgment as your client wants me to, if  
15 I can get there legally and jurisdictionally. How could I get  
16 to a point of being able to value the trust and value the  
17 likelihood, determine the likelihood that your client is in  
18 the money when the legal fees are going up hourly because of  
19 all of these appeals?

20 I'm not saying your client isn't entitled to appeal, but  
21 I'm just saying he may be his own worst enemy. That strategy  
22 means he's probably never going to be in the money.

23 So these are my -- I just, I'm wanting you hopefully to  
24 focus on these two biggest overarching issues in my brain.

25 The trust agreement --

1 MS. DEITSCH-PEREZ: Okay.

2 THE COURT: -- says what it says.

3 MS. DEITSCH-PEREZ: And I can do that, Your Honor.

4 THE COURT: I'm supposed to respect contractual  
5 terms. So that's overarching issue number one in my mind.

6 But second, again, I don't know what the legal term would  
7 be for meaningless exercise, but it's just, it's almost like  
8 an impossibility thing to ever declare a value that means  
9 anything when it's going to be different two weeks from now,  
10 --

11 MS. DEITSCH-PEREZ: Your Honor, --

12 THE COURT: -- a month from now, a year from now.

13 MS. DEITSCH-PEREZ: Your Honor, it's not an  
14 impossibility. That, one, we would endeavor to do this really  
15 quickly and efficiently so that the cost of this is not  
16 material to what's in the estate.

17 But secondly, these kinds of exercises are done all the  
18 time in litigation. You estimate the future values. You --  
19 an expert can assist Your Honor in determining what is a  
20 reasonable indemnification reserve. These are things that can  
21 be done. This is what lawyers and judges do.

22 THE COURT: This is off the chart. This is not like  
23 any other situation I can think of. This is off the chart  
24 with the amount of post-confirmation litigation. I mean, if  
25 you can point me to something analogous out there, I'd love to

1 see it.

2 MS. DEITSCH-PEREZ: The fact that there isn't a case  
3 exactly like this doesn't change the fact that there are  
4 professionals who can look at this, can look at what has been  
5 spent so far, can look at whether hearings could have two or  
6 three lawyers instead of ten, and make an estimate of the  
7 amount that's appropriate for an indemnity reserve. That's  
8 something that's susceptible of proof and determination.

9 It's not impossible for Your Honor to decide that, and  
10 it's not fruitless. Someone can say, hey, wait a minute,  
11 every hearing you had, you know, ten people from Pachulski and  
12 ten people from Quinn, even though they're no longer really  
13 involved, and ten people from Willkie. And so if you can rein  
14 that in, the Court can say, this is what a reasonable  
15 indemnification would be and this is what's left. And so,  
16 yes, it will finally create a path for us to resolve this  
17 estate.

18 But without this information, we're left with suspicion  
19 and uncertainty. How do you resolve something when you don't  
20 even know what's left? We don't -- because the reporting is  
21 quarterly, we've heard rumors in the marketplace that Class 8  
22 has been paid in full. So I would ask Mr. Morris, is that  
23 correct? Has Class 8 already been paid in full? We don't  
24 know. I mean, can you tell us, what's the amount of the  
25 estate right now? We don't know. Because we don't know what

1 those notes mean. And Your Honor isn't -- and Your Honor  
2 doesn't know and can't know without shedding a light on this  
3 what that balance sheet really means.

4 And Mr. Morris makes a big deal about, oh, there are  
5 admissions in the complaint then they don't know if they're in  
6 the money. Your Honor, the complaint was filed before the  
7 balance sheet. So when in the last proceeding HMIT said it's  
8 in the money, that's because it knew from the balance sheet  
9 it's in the money. So you know now, you can look at that  
10 balance sheet and say on the face of it, okay, there is more  
11 -- there are more assets than liabilities. In order to  
12 determine that that wouldn't be the case, you'd need a lot  
13 more information about what those notes that you point to in  
14 the denial of reconsideration actually mean.

15 But here, the estate is trying to say no, not only do the  
16 Plaintiffs not get to know that information, we're not telling  
17 Your Honor, either. We're just putting a lid on it. And so  
18 we can all go on fighting because we don't have the  
19 disinfectant of information.

20 And so -- and now we'll get into more of the law. Your  
21 Honor asked, how can I do this? Delaware law requires this  
22 Court to afford standing to all beneficiaries, including  
23 contingent ones. And especially when it's alleged that vested  
24 status is being withheld in contravention of the duty of good  
25 faith and fair dealing.

1 So let's go to Slide 3.

2 Okay. Let's take a look at where we started and why, why  
3 we're so upset about this. If you look at the value of the  
4 estate as of June of '22, there was somewhere in the mid-\$600  
5 million in assets. And at the start, there was something  
6 under \$400 million in claims. And so now, as of the end of  
7 '23 -- go back a second, go back, Mike, one more -- as of the  
8 end of '23, there was about \$120 million of Class 8 and 9  
9 remaining. But remember, there was -- you know, if you  
10 subtract 400 from 650, you've got \$250 million. That's a  
11 pretty big cushion.

12 So let's go forward and look at what we know from the  
13 balance sheet. So, if we -- and we've put references there.  
14 But if we go through -- you can see from the face of the  
15 balance sheet there is a net value -- that's after everybody,  
16 8 and 9 have been paid off -- of \$122 million. So, in order  
17 to get rid of that, you have to assume the indemnification is  
18 going to eat up all of that.

19 Now, think about what the indemnification means. If in  
20 fact there was no wrongdoing, well, there'll be no judgment to  
21 indemnify.

22 THE COURT: But what about the --

23 MS. DEITSCH-PEREZ: If in fact --

24 THE COURT: What about the professional fees?

25 MS. DEITSCH-PEREZ: \$122 million, Your Honor?

1 THE COURT: Well, we're three years post-  
2 confirmation, with no end in sight to these appeals.

3 MS. DEITSCH-PEREZ: Your Honor, I think it defies  
4 belief that they could reasonably spend \$122 million. And the  
5 point is, if we can get this information and really have  
6 satisfaction that maybe there's really nothing bad that's  
7 happened and there are no -- there's no hidden money anywhere,  
8 and we know what's there, this can end. This can end.

9 THE COURT: Do you --

10 MS. DEITSCH-PEREZ: We can finally see the light at  
11 the end of the tunnel.

12 THE COURT: I mean, again, we're here for legal  
13 argument, but you're saying this could end. This is never  
14 going to end. This is never going to end. I stayed things in  
15 2023, at your client's request, to take another crack at  
16 mediation. Okay? Even though we did mediation, even though I  
17 stayed everything in 2020 before confirmation and ordered  
18 global mediation and things didn't work out, your clients and  
19 Mr. Dondero convinced me, two years post-confirmation, stay  
20 everything again, because we don't think we got attention or  
21 respect from the mediators. The Debtor was focused on other  
22 people, like UBS and the Redeemer Committee and Joshua Terry.

23 So I don't know what happened, and I don't want to know  
24 what happened. It's not my role to know what happened in the  
25 most recent mediation exercise. But I do know that it's

1 enough to convince me this will never end. When things were  
2 stayed --

3 MS. DEITSCH-PEREZ: And Your Honor, --

4 THE COURT: When things were stayed and the legal  
5 fees weren't -- well, they were probably continuing to accrue  
6 because there were still appeal deadlines out there right and  
7 left that had to be addressed. But it's not going to settle.  
8 It's going to go on forever whether you get this information  
9 or not.

10 MS. DEITSCH-PEREZ: Your Honor, I'm telling you, and  
11 I represent the Plaintiffs, that the only thing that can  
12 enable this to end is to have sufficient information to be  
13 able to say, okay, I know what this all means, I know what  
14 we'll get, I know what we're foregoing.

15 How can anything ever settle if you don't know what you're  
16 giving up and you don't know what you're getting? How would  
17 that be possible? How would that be fair to parties to say,  
18 you should settle but you don't know what you're giving up and  
19 you don't know what you're getting? We're trying to get to  
20 the point where we could end this.

21 Shall I go on, Your Honor?

22 THE COURT: Yes, please.

23 MS. DEITSCH-PEREZ: Okay. Mike, next slide.

24 Okay. This is just a quick summary of the Defendants'  
25 arguments. Mootness, collateral estoppel, advisory opinion,

1 standing, failure to state a claim, and unclean hands.

2 Let's go to the next.

3 Okay. So, ironically, the Defendants argue that the  
4 balance sheet filed on July 6th eliminates the controversy  
5 among the party, parties, mootng the claims. But that can't  
6 be true, and Defendants won't provide the information to fill  
7 out the notes on the balance sheet and when -- when the  
8 balance sheet on its face shows assets exceed liabilities but  
9 the Defendants continue to maintain that they don't but  
10 without any analysis of why that's so.

11 Let's go on to the next.

12 But the Defendants shouldn't be able to have it both ways.  
13 If the balance sheet and financial statements are insufficient  
14 to determine whether assets exceed liabilities, as they claim,  
15 then the claims can't be moot. And, of course, a claim can't  
16 be dismissed simply because a defendant says in a pleading  
17 that a particular document shows that plaintiffs lack standing  
18 when the document itself does no such thing.

19 On its face, the balance sheet shows assets exceed  
20 liabilities. But if there's any doubt or ambiguity, that  
21 means discovery is needed, not that claims should be  
22 dismissed. This is a fact issue on which Plaintiffs are  
23 entitled to discovery and trial.

24 The next slide.

25 So, I mean, in response to the mootness arguments,

1 Plaintiffs cite cases that -- uncontroversial cases that say,  
2 when there's still a controversy, that claims are not moot.  
3 And if you'll look at Defendants' reply, they don't address  
4 any of that.

5 The Defendants also rely on the Court's order denying  
6 reconsideration of the HMIT gatekeeper regarding insider  
7 trading to say that it either moots Count Three or is the  
8 basis to collaterally estop Plaintiffs from proceeding. And  
9 there are numerous reasons that that's wrong.

10 So, one, the Court's dicta -- and it was dicta, because  
11 the Court had a lot of other reasons that it disposed of the  
12 matter -- is based on information that the Defendants now  
13 refuse to stand behind. And the Court's order doesn't address  
14 whether HMIT is in the money now or when the complaint was  
15 filed or whether it will ever. And it certainly doesn't  
16 exclude the potential that Plaintiffs would certainly be in  
17 the money but for Claimant Trustee's alleged breaches of good  
18 faith and fair dealing. So there's nothing about the Court's  
19 original or reconsideration order that precludes standing  
20 here.

21 Moreover, the order is obviously one that's on appeal and  
22 may be overturned.

23 Next slide.

24 If we look more closely at the requirements of collateral  
25 estoppel, Defendants are ignoring the basic elements of the

1 doctrine. So, one, the question is, are the claims identical?  
2 And they're not, for the reasons that I mentioned. The issues  
3 were obviously not necessary to the reconsideration decision  
4 since the Court stated it had several grounds for its  
5 decision.

6 More importantly, the Court's decision was made on a  
7 summary record in a gatekeeper proceeding. The -- so there  
8 was no discovery on that issue. And the Defendants have never  
9 fully detailed to the Plaintiff or the Court what's in the  
10 Claimant Trust, what's in the Indemnity Subtrust. We don't  
11 know.

12 So the balance sheet is summary information. The notes  
13 are not explained. And no one, not the Plaintiffs, not the  
14 Court, has had an opportunity to test the data and assumptions  
15 there, including undisclosed contingent liabilities and \$198  
16 million in off-balance-sheet adjustments.

17 So let's go to the next slide.

18 So I just urge the Court to go back and look at the  
19 balance sheet. And we have a picture of it up here. But if  
20 you look at it, you'll see notes. For example, Note 3. Value  
21 reflected herein consists primarily of ownership in private  
22 funds and subsidiaries. What funds? What are their assets?  
23 How liquid? Have they been sold? For a loss or gain? What's  
24 the resulting change in cash balance?

25 There's another note for other liabilities. To whom are

1 they owed? Note 5. The amount of further incremental  
2 indemnification reserves are currently expected to exceed \$90  
3 million and may be greater. \$50 million? \$90 million? \$125  
4 million? What's the math? What's the math behind that and  
5 how much has been used? What's been put aside? Who is  
6 getting it?

7 It says \$35 million has been funded into the Indemnity  
8 Trust. What's the balance now? Did the additional funds  
9 reduce the value of the Claimant Trust? Did the money come  
10 out of current earnings, so maybe it hasn't reduced it?

11 Incremental springing contingent liabilities that range  
12 from \$5 to \$15 million. What are they? How much? When are  
13 they likely to crystallize?

14 These are among the questions that are unanswered from  
15 that balance sheet.

16 And let's go to Slide 12.

17 And so while -- Your Honor has pointed out many times that  
18 the August 25, 2023 opinion is very long, over a hundred  
19 pages, very detailed. And I concede: It is over a hundred  
20 pages. It is long. It has many sentences in it, and it has a  
21 lot of discussion. But there's no analysis about the value of  
22 the assets and liabilities or the net value of the Claimant  
23 Trust or what has been moved into the Indemnity Subtrust or  
24 why and was it justified. None of that is addressed.

25 The Court's October 6th opinion is short and it's cursory,

1 because it also doesn't analyze the value of the assets or  
2 liabilities or the net value of the Claimant Trust or what has  
3 been moved into the Indemnity Subtrust or why and whether it's  
4 justified. It simply states HMIT does not give proper  
5 attention to the voluminous supplemental notes in the balance  
6 sheet that were allegedly, this is a quote, "integral to  
7 understanding the numbers therein."

8 But what do those supplemental notes mean? The Debtor is  
9 vigorously shielding any scrutiny, while at the same time  
10 arguing that this Court's nonsubstantive reference to those  
11 notes collaterally estops Plaintiffs from bringing this  
12 action. But without access to information with which to  
13 challenge the other side, a party doesn't have a full and fair  
14 opportunity to be heard, and therefore any ruling based on  
15 that kind of proceeding can't have collateral estoppel effect.

16 Okay. So, again, this is just a summary. No full and  
17 fair opportunity prevents collateral estoppel, and the fact  
18 that there were numerous other grounds and a lack of reasoning  
19 to the issue that's being asserted here should serve  
20 collateral estoppel makes collateral estoppel inappropriate.

21 Okay. The Debtor also -- the Defendants argue that Count  
22 Three seeks an advisory opinion. It doesn't. It seeks a  
23 declaration concerning Plaintiffs' status that could be based  
24 on simple math from the face of the balance sheet that  
25 presently, presently there's enough money to pay everybody.

1 And so there would be a -- need to be a whole lot more  
2 explanation for the Defendants justifying why that's not the  
3 case.

4 So let's look at a hypothetical to see if Defendants'  
5 assertions about standing make sense. So let's say in a  
6 breach of contract case a broker fails to sell the plaintiff a  
7 million dollars' worth of shares that are at that time selling  
8 for a dollar each. Can the defendant move to dismiss, saying  
9 that plaintiff has no standing because the shares might go  
10 down in value, eliminating any damages? I'm sure Your Honor  
11 would say obviously not. But isn't that what the Defendants  
12 here are saying? It's -- they're saying it's possible they'll  
13 spend enough money to prevent the former equity from getting  
14 anything. But that doesn't mean that Plaintiffs lack standing  
15 now.

16 The Claimant Trust had sufficient assets to pay unsecured  
17 creditors in Class 8 and 9 in full, with interest, at least as  
18 early as mid-2023, maybe as early as September '22. Had Mr.  
19 Seery fulfilled his mandate, he should have distributed that  
20 and made the GUC certification. So Plaintiffs' contingent  
21 interests should have officially vested many months ago. And  
22 because of the duty of good faith and fair dealing, the Court  
23 --

24 THE COURT: What about Section 6.1 of the credit  
25 trust agreement?

1 MS. DEITSCH-PEREZ: You have to imply -- you have to  
2 add into that a duty of good faith and fair dealing. And so  
3 if Mr. -- if the Claimant Trustee has not taken those actions  
4 for the express purpose of making sure to silence -- trying to  
5 silence Class 10 and 11 and prevent them from getting money  
6 and being able to spend it all, you know, paying -- holding  
7 back enough to eventually pay a dollar -- a dollar less to  
8 Class 9, and using the rest of the money. So, Your Honor,  
9 because of the duty of good faith and fair dealing, 6.1 does  
10 not tie Your Honor's hands.

11 And let's look at the Slide 16.

12 THE COURT: The Trustee is required to reserve  
13 amounts necessary for indemnification obligations and the  
14 administration expenses of the trust are entitled to payment  
15 ahead of any classes under the plan. Class 8, Class 9, as  
16 well as --

17 MS. DEITSCH-PEREZ: Uh-huh.

18 THE COURT: -- 10, 11.

19 MS. DEITSCH-PEREZ: Your Honor, but is not -- is  
20 there not any limit on how much can be set aside? Let's say  
21 there were -- there was \$300 million left over.

22 THE COURT: This is where I go back --

23 MS. DEITSCH-PEREZ: Could a Claimant --

24 THE COURT: -- to your client is in control of its  
25 own destiny here. This --

1 MS. DEITSCH-PEREZ: Well, basically, is Your Honor  
2 saying --

3 THE COURT: This should all be over. This should all  
4 be over, three years post-confirmation. It should all be  
5 over.

6 MS. DEITSCH-PEREZ: Yes. And --

7 THE COURT: They stayed --

8 MS. DEITSCH-PEREZ: Yes. And if we --

9 THE COURT: They stayed the mega-lawsuit. They  
10 stayed the mega-lawsuit for the reasons you are suggesting.

11 MS. DEITSCH-PEREZ: The unjustified mega-lawsuit that  
12 shouldn't have been brought in the first place. They stayed  
13 it. Very nice. They stayed it because they didn't -- they  
14 knew they didn't need that money. They knew it was  
15 unjustified. So they stayed it.

16 THE COURT: So that would suggest to me proper  
17 exercise of business judgment, litigation judgment. But they  
18 have no control over all of these appeals and all of the --

19 MS. DEITSCH-PEREZ: But --

20 THE COURT: -- litigation that your clients pursue.

21 MS. DEITSCH-PEREZ: Your Honor, my clients pursue  
22 litigation because they don't have the information to know  
23 whether they're -- wrongdoing is occurring. And the hallmark  
24 of this bankruptcy --

25 THE COURT: That doesn't apply with regard to the

1 appeals. And, again, --

2 MS. DEITSCH-PEREZ: Yes. And the appeals --

3 THE COURT: -- if your client wants to appeal, that  
4 is what's beautiful about our system. You can appeal and  
5 maybe get judgments overturned. But --

6 MS. DEITSCH-PEREZ: That's right.

7 THE COURT: -- it's a strategy here. Right? As long  
8 as you keep doing that, --

9 MS. DEITSCH-PEREZ: No, it's --

10 THE COURT: As long as you keep doing that, HMIT and  
11 Dugaboy's contingent interests, any recovery on them is going  
12 to continue to become less and less likely.

13 MS. DEITSCH-PEREZ: But so Your Honor, is Your Honor  
14 actually suggesting that they should lie down and not  
15 challenge anything to save a buck, and so if things have  
16 happened --

17 THE COURT: No. You heard what I said. Appeal away.  
18 Appeal away. No trial judge, no bankruptcy judge gets things  
19 right a hundred percent of the time. So appeal away. But  
20 don't complain about maybe not being in the money, when the  
21 greatest risk, it sounds like, to your client not being in the  
22 money is the professional fees continuing to impair value.  
23 And we could never get to a point in time where we could --  
24 you know, again, my words earlier, meaningless exercise. How  
25 could I ever make a declaratory judgment about value or the

1 likelihood of your client recovering as long as there are  
2 dozens of appeals continuing to cause the liabilities to  
3 increase, the expenses to increase?

4 MS. DEITSCH-PEREZ: Your Honor, that's, I mean, --

5 THE COURT: You're asking the Court to do something  
6 impossible.

7 MS. DEITSCH-PEREZ: It's not impossible, because  
8 these appeals -- appeals like this happen all the time, and  
9 there are certainly professionals who are involved --

10 THE COURT: Name one bankruptcy case in history where  
11 there have been this many appeals.

12 MS. DEITSCH-PEREZ: It -- there don't -- there  
13 doesn't have to be another one with this many appeals. You  
14 just look at the cost of an appeal in any case and figure out  
15 whether, with what's going on here, what is the appropriate  
16 amount to set aside for that cost. It's eminently doable. It  
17 doesn't -- we don't have to have an exact case to match it to.  
18 We just need to have -- are there ever appeals of whether a  
19 release is overbroad? Sure. Are there ever appeals about  
20 whether a gatekeeper is appropriate? Sure. Are there ever  
21 appeals about whether the dismissal of a claim is appropriate?  
22 Sure. Those are all things that someone can look at and say,  
23 well, this is an appropriate amount to be spent on that, and  
24 so this is an appropriate amount to hold aside for resolving  
25 it.

1 But what we're saying is if we can get sufficient  
2 disclosure, we can figure out whether or not there -- it ought  
3 to be ended. But without that, we're left saying, what's  
4 being hidden here? What's actually left? What's been done?  
5 And so that's why -- and this is a problem that comes up in  
6 trusts all the time when there's not sufficient disclosure of  
7 what's in the trust. So that's why, under the *Restatement of*  
8 *Trusts*, --

9 THE COURT: Wait, wait, wait. This is what happens  
10 all the time? I don't know what kind of --

11 MS. DEITSCH-PEREZ: Yeah. In other words, that --

12 THE COURT: What post-confirmation trust agreement  
13 that's been approved as part of a plan does this happen all  
14 the time?

15 MS. DEITSCH-PEREZ: I'm not talking about -- about  
16 trusts in bankruptcies in particular. I'm talking about --

17 THE COURT: That's what we're dealing with here.

18 MS. DEITSCH-PEREZ: Well, --

19 THE COURT: And I'm just telling you: One time, I've  
20 wracked my brains, and one time since I've been on the bench  
21 -- I'm coming up on my 18-year anniversary.

22 MS. DEITSCH-PEREZ: Uh-huh.

23 THE COURT: I'm old. But one time I have had  
24 litigation about what the heck is going on with the post-  
25 confirmation creditor trust.

1 MS. DEITSCH-PEREZ: Uh-huh.

2 THE COURT: The facts were so very different. It was  
3 a creditor trust agreement, and I think it had a three-year  
4 term on it. The trust was going to be wrapped up in three  
5 years. And Year 3 came along and there was a motion to extend  
6 it. We're not done, we want to expand it, I don't know, six  
7 months, maybe a year. And then that time frame went by and  
8 there was another motion to extend it. So it was extended  
9 another year. And then it happened again.

10 And a creditor objected, saying, I want to know what the  
11 heck is going on. And I looked at the docket sheet and I'm  
12 like, gosh, there aren't any appeals out there, there's hardly  
13 any activity that's going on. And so we had a hearing. And  
14 the trustee was getting a flat fee that was rather large for  
15 the size of that estate, where unsecured creditors were  
16 probably going to get less than ten cents on the dollar. And  
17 we ended up having another hearing where we find out that the  
18 oversight committee hadn't met in like three years and these  
19 creditors who are likely to get five cents on the dollar, they  
20 had just mentally checked out a long time ago.

21 And even in that situation, I was struggling with my  
22 power, my jurisdiction, to put any equitable oversight  
23 mechanisms in place when the creditors had voted on this, when  
24 the creditors got to see the creditor trust agreement before  
25 the confirmation hearing and no one complained. And luckily,

1 that situation was resolved. The creditor trustee said, we're  
2 going to wrap it up in six months. I'm no longer going to  
3 take my compensation. And it was some tax issue that no one  
4 had been focusing on properly, like I think maybe the company  
5 hadn't done tax returns in a gazillion years before  
6 confirmation.

7 But the point I'm getting at is, again, many, many legal  
8 issues out there, but the overarching issue I keep coming back  
9 to is there's a creditor trust agreement that everyone got  
10 notice of and the Court approved. And contractual terms are  
11 something I'm supposed to respect. And you're asking me, on  
12 an equitable basis, to overrule this. This has maybe far-  
13 reaching effects for everyone who strikes a bargain in Chapter  
14 11 with, Here's our plan, here's what the liquidating trust is  
15 going to be governed by, here's the hearing, speak now or  
16 forever hold your peace, I approve it. And --

17 MS. DEITSCH-PEREZ: You're right, Your Honor, that it  
18 has far-reaching effects. And if you don't do something to  
19 shine a light on this and enable the disclosure and the  
20 hearing, you will embolden claimant trustees to do exactly  
21 what's happening here, maybe in even worse circumstances. And  
22 the difference between the case you mention and the case here  
23 is -- actually weighs in favor of intercession sooner here  
24 because there is so much money involved.

25 So there's -- it's not a piddling amount that, you know,

1 where creditors are only getting a couple cents on the dollar  
2 anyway, so, you know, they're going to get three cents or two  
3 cents. It's of less magnitude. Here, there is an enormous  
4 amount of money that may be squandered. And so it's more  
5 important to look hard at this and impose the covenant of good  
6 faith and fair dealing.

7 And that's why the *Restatement of Trusts* says that  
8 beneficiaries of a trust are -- include contingent  
9 beneficiaries. And then if you take --

10 Let's go to the next slide, Mike.

11 Okay. Delaware courts also look to *Black's Law*  
12 *Dictionary*. And that's important here, because it actually  
13 includes contingent beneficiaries and direct beneficiaries  
14 within the definition, without any qualification, but  
15 expressly distinguishes an incidental beneficiary or someone  
16 who's going to be a beneficiary by virtue of a separate  
17 contract. And nothing in the Claimant Trust agreement  
18 indicates that Plaintiffs are merely incidental beneficiaries.  
19 And that's important because in that *Paul* case that Defendants  
20 rely on so heavily, they were incidental beneficiaries. It  
21 was a separate document, not the trust agreement itself, that  
22 would give rise to the status of the plaintiffs.

23 And so Delaware -- go to 18 -- Delaware courts make a  
24 point of not -- of not reading statutory language  
25 restrictively to exclude classes of beneficiaries. And so

1 while they are not absolutely on point, they are thematically  
2 on point, and to say that if someone is even a contingent  
3 beneficiary, they ought to have the rights that one has under  
4 the Delaware law.

5 And so -- go to -- move -- next slide.

6 And the duty of good faith and fair dealing is not  
7 disclaimed in the Claimant Trust agreement, and moreover, it  
8 cannot be disclaimed. So that's something Your Honor has to  
9 take into account. And the impact of a duty of good faith and  
10 fair dealing is that a party is basically estopped from  
11 raising a provision that they are using in conjunction with  
12 their own wrongdoing.

13 So if the Claimant Trustee is deliberately not paying out  
14 \$8 million in full in order to keep an unreasonable amount in  
15 reserve and be able to be employed at \$150,000 a month, you  
16 know, being paid the same thing now, when most of the  
17 liquidation has already been done, as, you know, when there  
18 were a million things going on and a lot of management. So it  
19 does seem unreasonable, and the Claimant Trustee has the power  
20 to keep that going basically forever.

21 Next slide.

22 And so -- and when I said earlier, you know, this is a  
23 common thing, what I meant was cases like *Estate of Cornell*  
24 and *Edwards*. It's just a -- it's a universal problem that you  
25 can prevent or postpone vesting unreasonably and prevent

1 distribution by your own acts.

2 And if you look at the Defendants' reply, there is not one  
3 word about these concepts, about whether or not the Court has  
4 the power and, really, must stop a trustee from raising their  
5 own interest over the interests of the beneficiaries,  
6 including the contingent beneficiaries.

7 Next slide.

8 So, and I really covered this to some degree, but  
9 Defendants' reliance on *Paul Capital*, which is an unpublished  
10 case, is misplaced. The interests here are not incidental.  
11 They're not derived from an outside contract. The court in  
12 *Paul Capital* also relied on the fact that the trust agreement  
13 -- agreements in that case were fully integrated, which was a  
14 reason they didn't look to that outside contract. But in  
15 fact, there's no merger clause in the CTA, so that's another  
16 difference.

17 Next.

18 Defendants' entire argument that Plaintiffs are not  
19 entitled to an accounting turns on its erroneous conclusion  
20 that Plaintiffs are not beneficiaries under the CTA. And now  
21 they also point to -- which I don't believe they did in their  
22 papers -- they also point to the general rule that an  
23 accounting is not done as a matter of course. But this Court  
24 has the power under Texas law to impose an accounting when  
25 there are questions, as there are here, that need to be

1 answered in order for the parties to make sensible decisions  
2 about what ought to be done going forward.

3 Then, unclean hands, it's a one-sentence argument in the  
4 Defendants' brief referring to the Kirschner litigation, which  
5 it doesn't actually identify by name and doesn't say anything  
6 about the fact that it was voluntarily stayed. And the claim  
7 against HMIT, and it is breach of contract, so it's really  
8 hard to understand how being a defendant in a breach of  
9 contract action is unclean hands. And the Plaintiffs made  
10 these points in response to Defendants' motion, and  
11 Defendants' reply brief is conspicuously silent of any  
12 rebuttal.

13 Okay. So, Defendants' motion to dismiss needs to be  
14 denied so that Plaintiffs finally have a full and fair  
15 opportunity to challenge Defendants' assertion.

16 Even if this Court disdains Plaintiffs and sympathizes  
17 with the Claimant Trustee, the Court is making law here. And  
18 as we've pointed out, the law would create this platform for  
19 claimant trustees to enshrine themselves and to do things  
20 under a veil of secrecy. And that's not something that I  
21 would think this Court would want to do.

22 If there's enough money to pay all of Classes 8 and 9, the  
23 remainder belongs to Classes 10 and 11, not the estate  
24 professionals. Money left over after --

25 THE COURT: Let me ask you.

1 MS. DEITSCH-PEREZ: -- Class 8 and 9 are paid --

2 THE COURT: Again, that's just not entirely correct,  
3 because of 6.1. It is in there that indemnification  
4 obligations must be reserved for. And let me ask you: How  
5 many times have your clients tried to sue Mr. Seery?

6 MS. DEITSCH-PEREZ: I -- a couple. And the point is  
7 if he --

8 THE COURT: Only a couple?

9 MS. DEITSCH-PEREZ: Yes.

10 THE COURT: Only a couple? So, --

11 MS. DEITSCH-PEREZ: Yes. But --

12 THE COURT: So they're required to reserve amounts  
13 necessary. How much is your client or your clients seeking to  
14 recover from Mr. Seery in those couple of lawsuits? I think  
15 there have been more than two attempts.

16 MS. DEITSCH-PEREZ: I don't think it's -- I don't  
17 think the -- I don't think the amounts sought are the issue.  
18 It's -- it's there's -- and I'm not counsel of record in the  
19 insider trading case, but I don't remember a large amount.  
20 The -- in the case we're bringing to --

21 THE COURT: The insider trading case? The insider  
22 trading case? Are you talking about the Stonehill/Farallon  
23 thing?

24 MS. DEITSCH-PEREZ: Yeah. Yes. I don't -- that --  
25 you asked about every case where Mr. Seery is mentioned. So I

1 don't think there's a big number there. And the case --

2 THE COURT: Wait, wait, wait.

3 MS. DEITSCH-PEREZ: -- that I have --

4 THE COURT: You don't think there is a big number  
5 there? You don't remember the prayer for relief in that?

6 MS. DEITSCH-PEREZ: I don't, Your Honor. It's not --  
7 I'm not the lawyer of record in the case.

8 THE COURT: Okay.

9 MS. DEITSCH-PEREZ: But let me point out, if --

10 THE COURT: I think it was rather open-ended and  
11 large. Okay? But, and then there's the professional fees and  
12 expenses that have priority.

13 MS. DEITSCH-PEREZ: Your Honor, --

14 THE COURT: I mean, I just, I want to hear: Are you  
15 asking me to disregard Section 6.1 on equitable grounds? I  
16 think at bottom you are, and I just want to hear you answer  
17 that question.

18 MS. DEITSCH-PEREZ: Your Honor, I'm going to answer  
19 that question, but I'm also going to point out that the  
20 indemnification, if in fact there is intentional wrongdoing  
21 that occurred, the estate is not obligated to indemnify. If  
22 in fact the Claimant Trustee prevails in a claim or Mr. Seery  
23 prevails in a claim, there is no judgment to indemnify. So  
24 we're only talking about professional fees.

25 And yes, Your Honor, you don't ignore 6.1. You read it

1 with a duty of good faith and fair dealing applied in it, and  
2 that enables you to allow this case to proceed, which is  
3 necessary if we are ever going to end this matter.

4 And I will tell you, you asked about what's being sought  
5 from Mr. Seery.

6 THE COURT: Can someone on your team -- can someone  
7 on your team tell me how many pending appeals there are right  
8 now? Because the chart that I asked my law clerk to pull is  
9 several months old.

10 MS. DEITSCH-PEREZ: We can -- I'm -- we can submit it  
11 after the fact, Your Honor.

12 THE COURT: Okay. I wanted to know right now, but --

13 MS. DEITSCH-PEREZ: We'll send something.

14 THE COURT: I wanted to know right now, when I'm --

15 MS. DEITSCH-PEREZ: I mean, I don't know right now  
16 how many there are.

17 THE COURT: Is -- are there a dozen?

18 MS. DEITSCH-PEREZ: And I wouldn't want to try and  
19 count while I'm sitting here.

20 THE COURT: Are there a dozen? Can you say, are  
21 there more than a dozen?

22 MS. DEITSCH-PEREZ: I don't know, Your Honor. I  
23 think many of them have wound down, and so the only -- we're  
24 awaiting decision. So I don't know.

25 But appeals, of their nature, are generally not that

1 expensive. There's no discovery. You write a brief. You go  
2 and argue it.

3 THE COURT: That is not my recollection whatsoever  
4 from reviewing fee apps for 18 years or for practicing law 17  
5 years. You know. If --

6 MS. DEITSCH-PEREZ: Your Honor, I agree, if there  
7 were not -- if the Defendants didn't bring six or seven people  
8 to New Orleans or Houston when there is an appeal, I would  
9 think that it would cost less. There's no reason, in this day  
10 and age, where you can -- if you're only listening, you can --  
11 you can do that from your office, because the Court provides  
12 an audio link. There's no reason to have that many people  
13 travel clear across the country to go sit and listen to  
14 arguments. So, is there a reason things cost more than they  
15 should? Absolutely. But that's not the Plaintiffs.

16 THE COURT: Okay.

17 MS. DEITSCH-PEREZ: This Court could look at what is  
18 left and say, you know what, in my experience, taking into  
19 account your 18 years, this is -- this is what this many  
20 proceedings should cost. That's the amount of -- and even if  
21 you add a little cushion -- that's the appropriate amount of  
22 indemnity, and everything else can be distributed. You can do  
23 that, Your Honor. You have the -- there are professionals who  
24 could give expert testimony, and with that, between that and  
25 Your Honor's experience, you can figure that out. It's not a

1 black box.

2 THE COURT: All right. Mr. Morris, your rebuttal,  
3 please.

4 MR. MORRIS: Thank you, Your Honor.

5 If nothing else, counsel's presentation proved one thing,  
6 and that is this proceeding should be dismissed. She insists  
7 -- she had her presentation up on the board -- that they're in  
8 the money. We disagree. We disagree both with the analysis  
9 and with its legal significance.

10 But just as HMIT contended last summer that they were in  
11 the money, counsel today is ratifying that and saying they're  
12 in the money. If they're in the money, why do they need this  
13 information? They don't.

14 Let me just start with the rebuttal, because it's going to  
15 be some random points just because I'm -- I've taken some  
16 notes.

17 The concept that three-plus years ago Heller Draper,  
18 Munsch Hardt, Bonds Ellis couldn't foresee that we would be  
19 here is mind-boggling, and, then, legally irrelevant. You  
20 know who had the foresight to see that we might be here? The  
21 Creditors' Committee. They're actually the ones who drove  
22 this process on the Claimant Trust agreement. It's why the  
23 agreement says exactly what it says. It's an agreement  
24 between parties that defines the beneficial owners' rights and  
25 the limitations on those rights.

1           There is a reason that contingent trust beneficiaries are  
2 not owed any duty whatsoever until their claims vest and that  
3 they have no rights under the Claimant Trust agreement or the  
4 plan, at least as it pertains to the Claimant Trust agreement,  
5 until their rights vest. The vesting process was not an  
6 accident. It was intended to make sure that Mr. Dondero could  
7 not do exactly what counsel is making plain she wants to do  
8 today, and that is get information in order to second-guess  
9 every decision that Mr. Seery has made. Okay?

10           Everybody on our side of the table knew, based on Mr.  
11 Dondero's very long history of litigation, that this was a  
12 possible end result, and they prepared for it. That Mr.  
13 Dondero's lawyers did not is on them. The Court should not be  
14 rewriting the agreement today.

15           Ms. Deitsch-Perez contends that somehow we have obscured  
16 resources. No such thing has ever occurred. Okay? The plan  
17 and the Claimant Trust agreement provide very specific rules  
18 on what must be disclosed. There are other rules that require  
19 disclosures. There is no allegation whatsoever that the  
20 Claimant Trustee or the Claimant Trust has failed to meet its  
21 obligations to make the disclosures required under the  
22 Claimant Trust agreement and under the law.

23           And in fact -- this is another point that just gets  
24 obscured in all of this, like a suggestion that somehow Mr.  
25 Seery is some rogue guy doing stuff all by himself. That's

1 false. It's baseless. There is a Claimant Oversight Board  
2 with an independent member and with two members who have a  
3 substantial stake in the Claimant Trust. And there are many  
4 Claimant Trust beneficiaries, not one of whom is here to  
5 complain, not one of whom is concerned about the lack of  
6 disclosure, not one of whom is concerned about the reserves  
7 that have been made in this case.

8 There's really nothing more to talk about, but I have to  
9 respond to certain of the other points. This notion that  
10 somehow assets that exceed liabilities are the property of  
11 HMIT is legally incorrect. That's as polite as I can say it.  
12 Your Honor focused on it. 6.1. It is what it is. But I do  
13 need to make the point that there is no way that anybody could  
14 make a reasonable estimate of indemnification claims. It's  
15 not just appeals, Your Honor. That's one aspect, and I  
16 appreciate Your Honor focusing on it. But we have litigation  
17 in Guernsey. We have litigation in the Southern District of  
18 New York. We have, you know, these suits. He doesn't want --  
19 he is just looking for information.

20 He tried to sue my firm on this ridiculous theory that we  
21 were actually his lawyer way back in September 2019. Like,  
22 really? It was withdrawn in the face of a Rule 11 motion.  
23 But you know what? My firm incurred expenses defending  
24 itself.

25 These things don't stop. There is another lawsuit to

1 remove Mr. Seery. That's been stayed pending the outcome  
2 here, because just like they have no legal right or equitable  
3 claim to obtain any information from the trust, they have no  
4 legal right or equitable claim to remove Mr. Seery. But we're  
5 going to have to do that.

6 The money in the trust is not HMIT's. They have no legal  
7 or equitable claim to that money unless and until all senior  
8 claims and expenses are satisfied. And that will not happen  
9 as long as there's pending litigation.

10 You know, you're encouraged to make an estimate. What  
11 happens if your estimate is wrong, Your Honor? What happens  
12 if you come up with a ruling and say the estimate is \$50  
13 million and that's what Mr. Seery reserves, because he's going  
14 to comply with any order this Court issues, and at the end of  
15 \$50 million there's still litigation and he or other  
16 indemnified parties have been sued? And now what? Now what  
17 happens then?

18 That's why this is completely untenable and it has no  
19 basis in law, fact, or equity.

20 Dicta? Your Honor's decision that HMIT was not in the  
21 money was dicta? That was the whole basis for the motion.  
22 The motion sought reconsideration on the basis that they were  
23 in the money and therefore had standing. It's not dicta.  
24 It's the holding, after an analysis of the balance sheet,  
25 after showing the faulty logic in HMIT's presentation. That

1 it's a balance sheet, Your Honor. It's not cash. You don't  
2 spend what's on a balance sheet, you can't buy anything with  
3 what's on the balance sheet, because what's on the balance  
4 sheet is a bunch of contingent stuff. Like the Notes  
5 Litigation. \$70 million. They're here telling you they're in  
6 the money, and they treat that \$70 million as being in the  
7 Claimant Trust's pocket. It's not. Not only is it not in the  
8 Claimant Trust's pocket, Mr. Dondero is doing everything he  
9 can to make sure it never gets in the Claimant Trust's pocket.

10 This is their disingenuous theory of what the balance  
11 sheet means.

12 Again, apologies for the somewhat disparate nature of the  
13 rebuttal.

14 Duty of good faith and fair dealing. You've heard that a  
15 lot. Where is it in the complaint? What cause of action here  
16 is dependent on duty of good faith and fair dealing? Nothing.  
17 You won't find it. The words aren't there. This is a request  
18 for information and two requests for declaratory judgment that  
19 assets exceed liabilities and that they may vest someday in  
20 the future. Their complaint, the only thing that's the  
21 subject of this motion, has nothing to do with the duty of  
22 good faith and fair dealing.

23 The Kirschner action. It was stayed. But you know what,  
24 Your Honor? It wasn't dismissed. It was stayed because  
25 responsible parties like Mr. Kirschner and Mr. Seery said,

1 let's pause and see what happens. There may come a time when  
2 we start that litigation. There may come a time. Right? It  
3 wasn't dismissed.

4 So the notion that we've made a decision that it's not  
5 necessary is wrong. The decision was made that we don't have  
6 to spend that money today. Let's keep it on ice and let's see  
7 if we need to in the future.

8 Willkie. We heard some disparaging remarks about  
9 Willkie's participation in these proceedings. Well, you know  
10 what, Your Honor? Mr. Seery, God bless him, never retained  
11 personal counsel in this case until HMIT sought leave to sue  
12 him. Willkie is in this case only because Mr. Dondero made  
13 the decision to go after Mr. Seery. Mr. Seery is entitled to  
14 indemnification, he has indemnification, and I'm delighted  
15 that the Willkie firm is by my side.

16 If Mr. Seery -- if Mr. Dondero has regrets about Willkie's  
17 participation, he shouldn't sue Mr. Seery anymore. Maybe they  
18 wouldn't have such a role.

19 Listen to what they're saying, Your Honor. Listen to Ms.  
20 Deitsch-Perez's hypotheticals. What if they find out that  
21 there's overpayments to professionals? What if there's  
22 payments to phantom vendors? What if they learn someday that  
23 Mr. Dondero -- Mr. Seery has engaged in wrongdoing? If this  
24 is what they want to hold out for, if this is what they want  
25 to continue to litigate for, because they think one day maybe

1 they might have something, somebody did something wrong, it's  
2 Mr. Dondero's prerogative. But this is not a vehicle to give  
3 him information to pursue those claims. It's just not.

4 Standing. There's no standing motion here. We're not  
5 saying dismiss this because they don't have standing to spring  
6 the claims. We're saying that they don't have any legal right  
7 to seek information because of the plain terms of the Claimant  
8 Trust agreement and the plan. It's not a standing question,  
9 it's about whether they have a legal right, and the plain  
10 terms of the operative documents state definitively that they  
11 do not.

12 They can't settle without the information.

13 (Pause.)

14 THE COURT: Whoops. We just lost you, Mr. Morris.  
15 We just lost your sound.

16 MR. MORRIS: Okay. Am I back?

17 THE COURT: You're back.

18 MR. MORRIS: Okay. People settle claims, known and  
19 unknown, all the time. Okay? Mr. Dondero should look at his  
20 success rate in litigation in this case and decide what he's  
21 really holding out for. He should look at the success in  
22 bringing the suit against my firm. He should look at what  
23 happened when we had the evidentiary hearing in Hunter  
24 Mountain and it was revealed that he was actually the party  
25 who engaged in inside information. He was actually the person

1 who lied to Mr. Seery about what was happening with MGM. He  
2 should think about his lack of success, the lack of merit,  
3 what happened in the Notes Litigation, how ridiculous the  
4 supposed oral agreement defense was. He should ask Mr.  
5 Rukavina how the hearing went in front of Judge Scholer last  
6 week on the appeal.

7 And he's holding out for more claims? This is what he  
8 wants to do for his life? God bless him. We will reserve  
9 everything.

10 Mr. Dondero is not the principal. He doesn't get some  
11 final say over the propriety of the actions of the Claimant  
12 Trustee or my firm. He doesn't have that right. That's what  
13 the Claimant Trust agreement was intended to do. It reflects  
14 the settlor's intent. And the settlor's intent was that Mr.  
15 Dondero or Hunter Mountain or Dugaboy would get a check at the  
16 end of the day if and when all senior claims and expenses were  
17 paid and satisfied. That has not happened, so they don't get  
18 a check. It's really that simple. It may be hard for him to  
19 take, and I appreciate that, but he should have thought about  
20 these issues three-plus years ago when all of this was  
21 proposed, because other people thought about it, and here we  
22 are.

23 And the Court has, I respectfully say, no authority, no  
24 jurisdiction to override the plain terms of an agreement that  
25 has been affirmed by this Court and has been affirmed by the

1 Fifth Circuit Court of Appeals. There has never been a  
2 challenge to these provisions that they just want you to  
3 completely ignore.

4 Just one moment, Your Honor.

5 (Pause.)

6 MR. MORRIS: Your Honor, I actually have nothing  
7 further unless the Court has any questions.

8 THE COURT: Okay. I only have one question. And let  
9 me preface it by saying that I don't pay much attention to  
10 appeals and satellite litigation unless something is brought  
11 to me. I mean, there just are not enough hours in the day for  
12 me. Plus it's just, it's not of my concern. Right? An  
13 appellate court is going to do what it's going to do and issue  
14 a mandate to me at some point, if appropriate. And the same  
15 with satellite litigation. It's either going to somehow be  
16 brought before me or not.

17 So you may think that I'm aware, lawyers, parties may  
18 think that I'm aware at all times of different things going on  
19 out there, but I'm really only sort of aware. I don't know  
20 how many pending appeals there are right now. But I do know  
21 that someone who seemed to know what he was talking about,  
22 another judge in Texas, not here, told me that Highland has  
23 spawned more appeals at the Fifth Circuit than any other -- I  
24 don't know if he said bankruptcy case in history or Chapter  
25 11. And he said, are you proud of that? Hahaha. And I said

1 no. I'm not even remotely proud of that. And I haven't  
2 double-checked his figures, but he's kind of a numbers wonky  
3 lovable geek, so I think he probably knew what he was talking  
4 about.

5 But finally getting to my question, Mr. Morris: You  
6 alluded to there's a vexatious litigant motion pending, and  
7 you reminded me I heard about that at a hearing many months  
8 ago. I think you said it was before Judge Brantley Starr, a  
9 district judge here in this district. Is that correct?

10 MR. MORRIS: It is correct, Your Honor. And we filed  
11 our reply papers last Friday, so it's been fully briefed.

12 THE COURT: Okay. Well, even though I don't closely  
13 monitor appeals, satellite litigation, I may be monitoring  
14 that.

15 MS. DEITSCH-PEREZ: Your Honor, may I make one  
16 rebuttal, by the way, to Mr. Morris's presentation? I just  
17 have one comment.

18 THE COURT: If it's 30 seconds. But this is out of  
19 order. Usually, Movant goes last. I assume this is going to  
20 be hugely important.

21 MS. DEITSCH-PEREZ: It is important. It's something  
22 Your Honor raised and Mr. Morris raised, so I want to point  
23 something out so there is no misunderstanding. There was a  
24 lot of talk about, well, the Plaintiff should have done  
25 something about this at the time of the plan. If Your Honor

1 recalls, at the time of the plan the projections were that  
2 Classes 8 and 9 would recover a fraction of their value. So  
3 there was no reason Classes 10 and 11 should be -- should have  
4 anticipated the issues that have arisen now. And I just want  
5 to remind everybody of that.

6 MR. MORRIS: And just one sentence, Your Honor. Mr.  
7 Dondero acquired every single asset that Highland has. He was  
8 in Highland's offices with full access to all information  
9 through October. He had Mr. Waterhouse, the CFO, onsite until  
10 just before the confirmation hearing, and there was no  
11 objection to those projections.

12 What happened is Mr. Seery and his team did a great job  
13 and benefited from a rising market, and yet here we're going  
14 to be subjected to more litigation. It's brilliant.

15 THE COURT: All right. Well, I am finished hearing  
16 everything. And with respect to that comment for the  
17 Plaintiffs, I continue to think this is a very important  
18 issue, of the many issues, of the many jurisdictional issues  
19 here. And there are so many issues, I'm not sure, if you  
20 prioritize the issues, where this one falls on the list. And  
21 yet as a bankruptcy judge I am obsessed a bit with the issue  
22 of the impact on the Chapter 11 world.

23 We have liquidating Chapter 11s with -- or even if they're  
24 not liquidating, we have Chapter 11s where there's a  
25 litigation trust like this one where there is sometimes a

1 discussion, when are you going to get the creditor trust  
2 agreement on file? Oh, it's going to be part of a plan  
3 supplement, and the plan supplement will be filed, you know,  
4 ten days before the confirmation hearing. Whatever. I'm just  
5 giving you a typical fact pattern. And it's part of the  
6 evidence. It's part of the information. It's not just  
7 evidence at the confirmation hearing. It's usually on file  
8 several days before the confirmation hearing, where it's out  
9 there for consumption, for people to complain about if they  
10 think there are objectionable terms. And we just have this in  
11 dozens and dozens of cases.

12 And I can even go further back in my brain here. I mean,  
13 Chapter 11, very soon after the case was filed, we had a U.S.  
14 Trustee saying conversion to Chapter 7 or appointment of a  
15 Chapter 11 trustee. You know, we can't have Mr. Dondero as  
16 the manager of this Debtor anymore. And despite that  
17 argument, we put in place a corporate governance mechanism  
18 that Mr. Dondero agreed to. And my point is there's always  
19 been a huge amount of oversight by what we considered the  
20 fulcrum security here, the unsecured creditors. A huge amount  
21 of oversight. A huge amount of oversight in this case that  
22 was negotiated in response to a very active Creditors'  
23 Committee and a U.S. Trustee saying can't have a debtor-in-  
24 possession here.

25 So why do I go back? I mean, it's really troublesome for

1 any judge to hear, We have suspicion. We are worried about a  
2 breach of good faith and fair dealing. What if there are  
3 fictional vendors?

4 I mean, this case has been full of extensive oversight.  
5 And not only could the Plaintiffs here have complained about  
6 the terms of the creditor trust agreement, heck, they could  
7 have said convert this sucker to Chapter 7, because a Chapter  
8 7 trustee will have -- there will be a lot of transparency for  
9 everything that happens in winding down this estate.

10 So, rambling, yes, I'm rambling. I do that. But the  
11 philosophical issue here, I just, it's hard for me to ignore,  
12 because, looming, we have the jurisdictional issues, but what  
13 you're asking me to do is something that it's just a fact  
14 pattern we see all the time of plans with litigation trust  
15 agreements. And we all know what the terms are going to be,  
16 and we can all argue about those terms if we don't think  
17 they're appropriate, and we all know that the future is  
18 uncertain and things could change, and that's just the way it  
19 is. Here it is. Live with it or not.

20 Anyway, but so that's a big deal, the contractual rights  
21 here.

22 And as I said earlier, another kind of overarching issue  
23 is it feels like kind of a meaningless exercise when we have  
24 the asset side of the balance sheet but the liabilities just  
25 grow unlike any other case. It's fair to say unlike any case.

1 There have been more appeals generated at the Fifth Circuit  
2 from this case than any Chapter 11 ever, and maybe any  
3 bankruptcy ever.

4 There was a reference to, well, yeah, there are lots of  
5 appeals, but you don't need to send six lawyers to New Orleans  
6 or have people. But I was just writing down as I was thinking  
7 through this, and Mr. Morris alluded to some of it, we've had  
8 at least the following law firms involved for either Mr.  
9 Dondero or entities he controls: Munsch Hardt; Bonds Ellis;  
10 Heller Draper; Louis Phillips' firm, I think that's Kelly  
11 Hart; the Stinson law firm; Sawnie McEntire's law firm; Ms.  
12 Ruhland, Amy Ruhland; Lang Winshew; and I forget the name of  
13 the lawyers who represented the Charitable Trusts.

14 MR. MORRIS: Mazin Sbaiti.

15 THE COURT: The Sbaiti law firm.

16 So I've just rattled off from memory nine law firms, okay?  
17 I'm not even sure I've captured them all. Probably not. So  
18 it's, on all sides of this, I can't remember if I've said this  
19 in court or I've just maybe said it back in chambers, but I'll  
20 say it: This feels like the Disneyland case. Have I ever  
21 said that in court yet? Do you know what I mean by that? I  
22 probably haven't.

23 The famous quote of Walt Disney, when someone asked him  
24 about the theme park and when it would be finished, and he  
25 said, Disneyland will never be finished as long as there are

1 creative people with imaginations. I mean, this is like the  
2 Disneyland case. It will never be finished as long as there  
3 are certain parties and lawyers who have imagination and keep  
4 filing stuff. I don't mean to be flippant, but I really am  
5 trying to emphasize what I said. Sure, people are entitled to  
6 appeal, but how can you complain about 'I don't know if I'm in  
7 the money or not' when there's just no end in sight?

8 So I'm going to obviously take this under advisement, and  
9 we will carefully look at every argument and every case,  
10 because that's what we do. That's what we're duty-bound to  
11 do. We don't knee-jerk anything around here. But I am very,  
12 very troubled by some of the arguments. And it's what made me  
13 ask about the vexatious litigant motion and its status,  
14 because it just feels so beyond the pale to make accusations  
15 of some sort of breach of good faith and fair dealing and  
16 raise the specter of lack of transparency and something  
17 untoward may be going on, when these were the terms negotiated  
18 as far as post-confirmation oversight, we have an Oversight  
19 Committee, and I think every rational person knows that the  
20 professional fees and the indemnification obligations and the  
21 appeals and the satellite litigation are why we can't wrap  
22 this up. Okay?

23 So let that soak in. And we will get an opinion out as  
24 soon as we can make it happen.

25 All right. We're adjourned.

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THE CLERK: All rise.  
(Proceedings concluded at 11:28 a.m.)

--oOo--

CERTIFICATE

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

**/s/ Kathy Rehling**

**02/20/2024**

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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

**In Re: Highland Capital Management, L.P**

§ Case No. **19-34054 SGJ 11**

**Dugaboy Investment Trust and Hunter  
Mountain Investment Trust, Appellant**

§

vs.

§

**Highland Capital Management, L.P., et al**

§

**3:24-CV-1531-X**

Appellee

§

**[26] Memorandum of opinion granting motion to dismiss adversary proceeding in which contingent interest holders in Chapter 11 Plan Trust seek a post-confirmation valuation of Trust assets) Entered on 5/24/2024**

**Volume 12**

**APPELLEE RECORD**



Pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, Highland Capital Management, L.P. (“Highland”) and the Highland Claimant Trust (the “Claimant Trust,” and together with Highland, “Appellees”), by and through their undersigned counsel, hereby submit this supplemental designation of items to be included in the record on appeal filed by Dugaboy Investment Trust and Hunter Mountain Investment Trust (together, “Appellants”) from the *Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets* [Docket Nos. 26-27], which was entered by the above named Bankruptcy Court in the above captioned adversary proceeding (the “Adversary Proceeding”) on May 24, 2024.

Appellees respectfully reserve the right to supplement and/or amend the record on appeal designated herein.

**Supplemental Items from the Docket in the Bankruptcy Case**

Appellees designate the following additional items from the docket in the above-captioned bankruptcy case (the “Bankruptcy Case”), in addition to the items previously designated by the Appellants:

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/09/2020	339	Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course
07/16/2020	854	Order Approving Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020
11/24/2020	1473	Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.

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Vol. 12 003299	01/22/2021	1811-2 (as modified by Docket No. 1875-4)	Claimant Trust Agreement
003317	08/11/2021	2700	Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.
003321	04/20/2023	3752	Memorandum of Law in Support of Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.'s Motion to Stay and Motion to Compel Mediation
003361	04/21/2023	3756	Post-Confirmation Report
003376	07/05/2023	3870	Order (A) Continuing Hearing on Motion to Stay and to Compel Mediation [Dkt. 3752] and (B) Directing Certain Actions in Advance of Continued Hearing
003379	08/02/2023	3897	Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation [Dkt. No. 3752]
003386	11/07/2023	3964	Joint Notice of Mediation Report

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Dated: July 8, 2024

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*/s/ Zachery Z. Annable*

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CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 9, 2020

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

Related to Docket Nos. 7 & 259

**ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR  
AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE**

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),<sup>2</sup> filed by the above-captioned debtor and debtor in possession

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(the “Debtor”); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee’s objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) \$60,000 for each of the first three months, (ii) \$50,000 for each of the next three months, and (iii) \$30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor’s expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

**## END OF ORDER ##**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 16, 2020

  
United States Bankruptcy Judge

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

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054 Chapter 11
	§	
Debtor.	§	Re: Docket No. 774
	§	

**ORDER APPROVING DEBTOR'S MOTION UNDER  
BANKRUPTCY CODE SECTIONS 105(a) AND 363(b)  
AUTHORIZING RETENTION OF JAMES P. SEERY, JR., AS  
CHIEF EXECUTIVE OFFICER, CHIEF RESTRUCTURING OFFICER, AND  
FOREIGN REPRESENTATIVE NUNC PRO TUNC TO MARCH 15, 2020**

Upon the *Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc To March 15, 2020* (the "Motion"),<sup>1</sup> and the

<sup>1</sup> All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

Court finding that: (i) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iv) due and sufficient notice of the Motion has been given; (v) entry into the Agreement was an exercise of the Debtor's sound business judgment; and (vi) it appearing that the relief requested in the Motion is necessary and in the best interests of the Debtor's estate and creditors; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, and DECREED** that:

1. The Motion is **GRANTED**.
2. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Agreement attached hereto as **Exhibit 1** and all terms and conditions thereof are approved, *nunc pro tunc* to March 15, 2020.
3. The Debtor is hereby authorized to enter into and perform under the Agreement.
4. The Debtor is authorized to indemnify Mr. Seery pursuant to the terms of the Agreement. Mr. Seery is also entitled to any indemnification or other similar provisions under the Debtor's existing or future insurance policies, including any policy tails obtained (or which may be obtained in the future), by the Debtor. The Debtor and Strand are authorized to enter into any agreements necessary to execute or implement the transactions described in this paragraph. For avoidance of doubt and notwithstanding anything to the contrary in this Order, Mr. Seery shall be entitled to any state law indemnity protections to which he may be entitled under applicable law.

5. No entity may commence or pursue a claim or cause of action of any kind against Mr. Seery relating in any way to his role as the chief executive officer and chief restructuring officer of the Debtor without the Bankruptcy Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Mr. Seery, and (ii) specifically authorizing such entity to bring such claim. The Bankruptcy Court shall have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

6. Notwithstanding anything in the Motion, the Agreement or the Order to the contrary, the Agreement shall be deemed terminated upon the effective date of a confirmed plan of reorganization unless such plan provides otherwise.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and/or implementation of this Order.

9. The Foreign Representative Order is hereby amended to substitute James P. Seery, Jr., as the chief executive officer, in place of Bradley S. Sharp, as the Debtor's Foreign Representative, Bermuda Foreign Representative and Cayman Foreign Representative. All other provisions of the Foreign Representative Order shall remain in full force and effect.

**###END OF ORDER###**

**EXHIBIT 1**

**Engagement Agreement**

003112

J.P. SEERY & Co., LLC  
[REDACTED]  
[REDACTED]  
[REDACTED]

June 23, 2020

CONFIDENTIAL

The Board of Directors of Strand Advisors, Inc.  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201

Re: Highland Capital Management L.P. (the “Company”)

Dear Fellow Board Members:

This letter agreement (“Agreement”) sets forth the terms and conditions of the engagement of the undersigned James P. Seery, Jr. (“I”, “me” or “my”), as Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”), effective as of March 15, 2020 (the “Commencement Date”), by the Company and its affiliates to perform financial advisory services as detailed below.

I appreciate the trust you have placed in me by asking me to assume these roles and thank you for the opportunity to continue to work with you to restructure the Company.

Roles:

I will serve as the CEO and CRO of the Company during its Chapter 11 bankruptcy case (the “Bankruptcy Case”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”).

In those roles, I will be responsible for overall management of the business of the Company in Chapter 11 including, directing the reorganization and restructuring of the Company, monetization of assets, resolution of claims, development and negotiation of a plan of reorganization or liquidation, and implementation of such a plan.

My direct reports will include the individuals at the Company that currently report to the Board of Directors of Strand Advisors, Inc. (the “Board”) or such other individuals employed by the Company as I determine should report to directly to me. In the event that the Board determines to restructure the reporting lines or functions of the Company, my direct reports will be amended in accordance with the Board approved restructuring.

At all times, I will remain a full member of the Board entitled to vote on all matters other than those on which I am conflicted.

003113

I will devote as much time to this engagement as I determine is required to execute my responsibilities as CEO and CRO. I will have no specific on-site requirements in Dallas, but will be on site as much as I determine is necessary to execute my responsibilities as CEO and CRO, consistent with Covid-19 orders applicable to Dallas and New York City.

#### Limitations on Services

My services under this engagement are limited to those specifically noted in this Agreement and do not include legal, accounting, or tax-related assistance or advisory services. For the avoidance of doubt, I am not providing any legal services in connection with this engagement and will have not any duties as a lawyer to the Company, the Board, or any of the Company's employees. The accuracy and completeness of all information submitted to me by the Company are the sole responsibility of the Company, and I will be entitled to rely on such information without independent investigation or verification.

In my role as CEO and CRO, I will act as an independent professional contractor to the Company and will not be an employee of the Company. I will provide and pay for my own benefits, including medical benefits, by J.P Seery & Co. LLC or otherwise.

#### Fees and Expenses:

In consideration of my acceptance of this engagement and performance of the services pursuant to this Agreement, the Company shall pay the following:

##### 1. Compensation for Services:

- a. Base Compensation: As compensation for my services as CEO and CRO of the Company, the Company shall pay me \$150,000.00 per calendar month ("Base Compensation"). Base Compensation shall be due and payable at the start of each calendar month. Consistent with current Board compensation practice, invoices rendered by me to the Company are due and payable by the Company on receipt. Payment of the Base Compensation will be retroactive to March 15, 2020.
- b. Bonus Compensation/Restructuring Fee:
  - i. The Company has agreed to pay me a restructuring fee upon confirmation of either a Case Resolution Plan or a Monetization Vehicle Plan in each case as defined below (the "Restructuring Fee").
  - ii. Case Resolution Restructuring Plan
    1. On confirmation of any plan or reorganization or liquidation based on resolution of a material amount of the outstanding claims and their respective treatment, even if such plan includes (x) a debtor/creditor trust or similar monetization and claims resolution vehicle, (y) post-confirmation litigation of certain of the claims, and (z) post-confirmation monetization of debtor assets (a "Case Resolution Plan"):
      - a. \$1,000,000 on confirmation of the Case Resolution Plan;
      - b. \$500,000 on the effective date of the Case Resolution Plan; and
      - c. \$750,000 on completion of cash or property distributions to creditors as contemplated by the Case Resolution Plan.

iii. Debtor/Creditor Monetization Vehicle Restructuring Fee:

1. On confirmation of any plan or reorganization or liquidation based on a debtor/creditor trust or similar asset monetization and claims resolution vehicle that does not include agreement among the debtor and creditors on a material amount of the outstanding claims and their respective treatment at confirmation (a "Monetization Vehicle Plan"):
  - a. \$500,000 on confirmation of the Monetization Vehicle Plan;
  - b. \$250,000 on the effective date of the Monetization Vehicle Plan; and
  - c. A contingent restructuring fee to be determined by the board or oversight committee installed to oversee the implementation of any Monetization Vehicle Plan based on the CEO/CRO (or acting as trustee) based upon performance under the plan after all material distributions under the Monetization Vehicle Plan are made.
  
2. Out-of-Pocket Expenses: In addition to the Base and Bonus Compensation, I shall be entitled to reimbursement for actual and reasonable out-of-pocket expenses ("Expenses") incurred in connection with the provision of services hereunder. Expenses will be billed along with Base Compensation and shall be paid by the Company at the same time. Expenses will be generally consistent with expenses incurred to date as a member of the Board.

Bankruptcy Court Approval

Notwithstanding anything herein to the contrary, I understand that this Agreement is contingent, in all respects, on the approval of the Bankruptcy Court. I also understand that the Company will seek approval of this Agreement in stages and that the Company will first seek approval of my retention as CEO and CRO and the payment of the Base Compensation and will defer seeking Bankruptcy Court approval of the Restructuring Fee until there have been further developments in the Bankruptcy Case.

Conflicts and Other Engagements

I am not aware of any potential conflicts of interest based on my understanding of the various parties involved in this matter to date.

The Company is aware that this engagement is not an exclusive engagement of my time, and that I have and will continue to have other business engagements and investments unrelated to the Company. Nothing in this Agreement or otherwise precludes me from representing or working with or for any other person or entity in matters not directly related to the services being provided to the Company under this Agreement. However, I will not take on any engagements directly adverse to the Company during the term of this engagement.

Privilege

I understand that in the course of this engagement, I may become party to or my services may become part of work product of legal counsel to the Company (the Company's in-house and outside counsel are collectively referred to as "Counsel"), and all communications between Counsel and me relating to this engagement shall be protected from disclosure to third parties under the attorney work product doctrine and/or the attorney-client privilege, and, therefore, shall be treated by me as privileged and confidential. I further understand that the Company has the exclusive right to waive the attorney-client privilege, and Counsel has the exclusive right to waive the protections afforded under the attorney work-product doctrine.

#### Termination of Engagement

This Agreement may be terminated at any time by either the Company or by me upon two weeks advance written notice given to the other party. The termination of this Agreement shall not affect my right to receive, and the Company's obligation to pay, any and all Base Compensation and Expenses incurred (even if not billed) prior to the giving of the termination notice; provided, however, that (i) if this Agreement is terminated by me, the amount of Base Compensation owed shall be calculated based on the actual number of days worked during the applicable month and I will return any Base Compensation received in excess of such amount and (ii) if this Agreement is terminated by the Company, Base Compensation shall be deemed fully earned as of the first day of any month. Bonus Compensation shall be earned by me immediately upon termination of me by the Company; provided, however, I shall not be entitled to Bonus Compensation if (a) the Bankruptcy Case is converted to chapter 7 or dismissed; (b) a chapter 11 trustee is appointed in the Bankruptcy Case; (c) I am terminated by the Company for Cause; or (d) I resign prior to confirmation of a plan or court approval of a sale as described in the Fees and Expense/Compensation for Services section hereof. For purposes of this Agreement, "Cause" means any of the following grounds for termination of my engagement, in each case as reasonably determined by the Board within 60 days of the Board becoming aware of the existence of the event or circumstance: (A) fraud, embezzlement, or any act of moral turpitude or willful misconduct on my part; (B) conviction of or the entry of a plea of nolo contendere by me for any felony; (C) the willful breach by me of any material term of this Agreement; or (D) the willful failure or refusal by me to perform my duties to the Company, which, if capable of being cured, is not cured on or before fifteen (15) days after my receipt of written notice from the Company.

#### Conditional Requirement to Seek Further Bankruptcy Court Approval of Agreement

The official committee of unsecured creditors in the Bankruptcy Case (the "Committee") may, upon two weeks advance written notice to the Company, require the Company to file a motion with the Bankruptcy Court on normal notice seeking a continuation of this Agreement and if such motion is not filed, this Agreement will terminate at the expiration of such two week period. If the Company files such motion, I will be entitled to my Base Compensation through and including the date on which a final order is entered on such motion by the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Committee may not deliver such notice to the Company until a date which is more than ninety days following the date the Bankruptcy Court enters an order approving this Agreement.

### Indemnification

As a material part of the consideration to me under this Agreement, the Company agrees (i) to indemnify and hold harmless me and any of my affiliates (the “Indemnified Party”), to the fullest extent lawful, from and against any and all losses, claims, costs, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, my engagement under this Agreement, or any actions taken or omitted to be taken by me or the Company in connection with this Agreement and (ii) to reimburse the Indemnified Party for all expenses (including, without limitation, the reasonable fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person (including, without limitation, any shareholder or derivative action, or any fee dispute), arising out of or relating to this Agreement, or such engagement, or actions. However, the Company shall not be liable under the foregoing indemnity and reimbursement agreement for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of the Indemnified Party.

The indemnification and insurance currently covering my role as a director shall be extended to me and fully cover me as provided therein in my roles as CEO and CRO.

### Miscellaneous

This Agreement (a) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any other communications, understandings or agreements among the parties with respect to the subject matter hereof, and (b) may be modified, amended or supplemented only by written agreement among all the parties hereto.

This Agreement is subject to approval by the Bankruptcy Court. As part of such approval the Company shall request that any such order approving this Agreement contain a provision extending the protections afforded to me as a Board Member pursuant to Paragraph 10 of the Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] to my role as CEO and CRO, which Order prohibits the commencement of any action against me without first obtaining Bankruptcy Court approval to initiate such action.

This Agreement and all controversies arising from or related to performance hereunder shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby submit to the jurisdiction of and venue in the federal and state courts located in New York City and waive any right to trial by jury in connection with any dispute related to this Agreement.

This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,



James P. Seery, Jr.

AGREED AND ACCEPTED

HIGHLAND CAPITAL MANAGEMENT L.P.

By: Strand Advisors, Inc., its general partner

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John Dubel  
Director  
Strand Advisors, Inc.

---

Russell Nelms  
Director  
Strand Advisors, Inc.

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This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

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Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

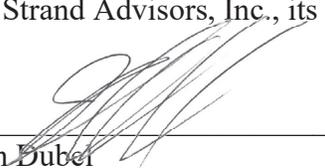
Very truly yours,

James. P. Seery, Jr.

AGREED AND ACCEPTED

**HIGHLAND CAPITAL MANAGEMENT L.P.**

By: Strand Advisors, Inc., its general partner

  
\_\_\_\_\_  
John Dubel  
Director  
Strand Advisors, Inc.

\_\_\_\_\_  
Russell Nelms  
Director  
Strand Advisors, Inc.

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This Agreement shall be binding upon the parties and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right to require full performance thereof at any time thereafter, and the waiver by any party of a breach of such provisions shall not be taken as or held to be a waiver of any subsequent breach or as nullifying the effectiveness of such provision.

Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective address set forth above in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith.

This Agreement and my rights and duties hereunder shall not be assignable or delegable by me.

The Company may withhold from any amounts payable under this Agreement such Federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

This Agreement may be executed (including by electronic execution) in any number of counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by electronic mail shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Please confirm the foregoing is in accordance with your understanding by signing and returning a copy of this Agreement, whereupon it shall become binding and enforceable in accordance with its terms.

Very truly yours,

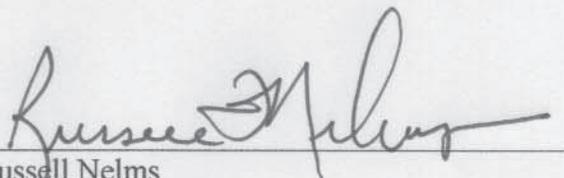
James. P. Seery, Jr.

AGREED AND ACCEPTED

**HIGHLAND CAPITAL MANAGEMENT L.P.**

By: Strand Advisors, Inc., its general partner

\_\_\_\_\_  
John Dubel  
Director  
Strand Advisors, Inc.

  
\_\_\_\_\_  
Russell Nelms  
Director  
Strand Advisors, Inc.

003120

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

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In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

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**DISCLOSURE STATEMENT FOR THE FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

---

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717)  
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Dallas, TX 75231  
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Facsimile: (972) 755-7110  
Email: MHayward@HaywardFirm.com  
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

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<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned cases (the “Debtor”), is sending you this document and the accompanying materials (the “Disclosure Statement”) because you are a creditor or interest holder in connection with the *Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.*, dated November 24, 2020, as the same may be amended from time to time (the “Plan”).<sup>2</sup> The Debtor has filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

This Disclosure Statement has not yet been approved by the Bankruptcy Court as containing adequate information within the meaning of section 1125(a) of the Bankruptcy Code. The Debtor intends to seek an order or orders of the Bankruptcy Court (a) approving this Disclosure Statement as containing adequate information and (b) confirming the Plan.

A copy of the Plan is attached hereto as Exhibit A.

The Debtor believes that the Plan is fair and equitable, will maximize the value of the Debtor’s Estate, and is in the best interests of the Debtor and its constituents. Notably, the Plan provides for the transfer of the majority of the Debtor’s Assets to a Claimant Trust. The balance of the Debtor’s Assets, including the management of the Managed Funds, will remain with the Reorganized Debtor. The Reorganized Debtor will be managed by New GP LLC – a wholly-owned subsidiary of the Claimant Trust. This structure will allow for continuity in the Managed Funds and an orderly and efficient monetization of the Debtor’s Assets.

The Claimant Trust, the Litigation Trust, or the Reorganized Debtor, as applicable, will institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action without any further order of the Bankruptcy Court, and the Claimant Trust and Reorganized Debtor, as applicable, will sell, liquidate, or otherwise monetize all Claimant Trust Assets and Reorganized Debtor Assets and resolve all Claims, except as otherwise provided in the Plan, the Claimant Trust Agreement, or the Reorganized Limited Partnership Agreement.

**IMPORTANT INFORMATION ABOUT THIS  
DISCLOSURE STATEMENT FOR YOU TO READ**

**The Debtor is providing the information in this Disclosure Statement to Holders of Claims and Equity Interests in connection with the Debtor’s Plan. Nothing in this Disclosure Statement may be relied upon or used by any Entity for any purpose other than with respect to confirmation of the Plan. The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose.**

**This Disclosure Statement has not been filed for approval with the Securities and Exchange Commission (“SEC”) or any state authority and neither the SEC nor any state authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon**

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern.

**the merits of the Plan. Any representation to the contrary is a criminal offense. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction.**

**This Disclosure Statement contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The Debtor considers all statements regarding anticipated or future matters to be forward-looking statements. Forward-looking statements may include statements about:**

- the effects of insolvency proceedings on the Debtor’s business and relationships with its creditors;**
- business strategy;**
- financial condition, revenues, cash flows, and expenses;**
- financial strategy, budget, projections, and operating results;**
- variation from projected operating and financial data;**
- substantial capital requirements;**
- availability and terms of capital;**
- plans, objectives, and expectations;**
- the adequacy of the Debtor’s capital resources and liquidity; and**
- the Claimant Trust’s or the Reorganized Debtor’s ability to satisfy future cash obligations.**

**Statements concerning these and other matters are not guarantees of the Claimant Trust’s or Reorganized Debtor’s future performance. There are risks, uncertainties, and other important factors that could cause the Claimant Trust’s or Reorganized Debtor’s actual performance or achievements to be different from those that may be projected. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. Therefore, any analyses, estimates, or recovery projections may or may not turn out to be accurate.**

**This Disclosure Statement has been prepared pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and is not necessarily in accordance with federal or state securities laws or other similar laws.**

No legal or tax advice is provided to you by this Disclosure Statement. The Debtor urges each Holder of a Claim or an Equity Interest to consult with its own advisers with respect to any legal, financial, securities, tax or business advice in reviewing this Disclosure Statement, the Plan and each of the proposed transactions contemplated thereby. Further, the Bankruptcy Court's approval of the adequacy of disclosures contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan or a guarantee by the Bankruptcy Court of the accuracy or completeness of the information contained herein.

Pachulski Stang Ziehl & Jones LLP ("PSZ&J") is general insolvency counsel to the Debtor. Development Specialists, Inc. ("DSI") is the Debtor's financial advisor. PSZ&J, DSI, and the Independent Board (as defined below) have relied upon information provided by the Debtor in connection with preparation of this Disclosure Statement. PSZ&J has not independently verified the information contained herein.

This Disclosure Statement contains, among other things, summaries of the Plan, the management of the Reorganized Debtor, the Claimant Trust, certain statutory provisions, certain events in the Debtor's Chapter 11 Case, and certain documents related to the Plan that are attached hereto and incorporated herein by reference or that may be filed later with the Plan Supplement. Although the Debtor believes that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that the summaries do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any conflict, inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern and control for all purposes. Except where otherwise specifically noted, factual information contained in this Disclosure Statement has been provided by the Debtor's management. The Debtor does not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission.

In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and on various assumptions regarding the Debtor's business. The Debtor's management has reviewed the financial information provided in this Disclosure Statement. Although the Debtor has used its reasonable business judgment to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited (unless otherwise expressly provided herein) and no representations or warranties are made as to the accuracy of the financial information contained herein or assumptions regarding the Debtor's business and its, the Reorganized Debtor's, and the Claimant Trust's future results. The Debtor expressly cautions readers not to place undue reliance on any forward-looking statements contained herein.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation or waiver. Rather, this Disclosure Statement shall constitute a statement made in settlement negotiations related to potential contested matters, potential adversary proceedings and other pending or threatened litigation or actions.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in the Disclosure Statement. Except as provided under the Plan, the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, may seek to investigate, file and prosecute Claims and Causes of Action and may object to Claims or Equity Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies any such Claims or Equity Interests or objections to Claims or Equity Interests on the terms specified in the Plan.

The Debtor is generally making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof where feasible, unless otherwise specifically noted. Although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so. Holders of Claims and Equity Interests reviewing this Disclosure Statement should not infer that, at the time of their review, the facts set forth herein have not changed since the Disclosure Statement was sent. Information contained herein is subject to completion, modification, or amendment. The Debtor reserves the right to file an amended or modified Plan and related Disclosure Statement from time to time.

The Debtor has not authorized any Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtor has not authorized any representations concerning the Debtor or the value of its property other than as set forth in this Disclosure Statement.

Holders of Claims or Equity Interests must rely on their own evaluation of the Debtor and their own analyses of the terms of the Plan in considering the Plan. Importantly, each Holder of a Claim should review the Plan in its entirety and consider carefully all of the information in this Disclosure Statement and any exhibits hereto, including the risk factors described in greater detail in ARTICLE IV herein, "Risk Factors."

If the Plan is confirmed by the Bankruptcy Court and the Effective Date occurs, all Holders of Claims against, and Holders of Equity Interests in, the Debtor will be bound by the terms of the Plan and the transactions contemplated thereby.

The effectiveness of the Plan is subject to certain material conditions precedent described herein and set forth in Article IX of the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Plan to become effective will be satisfied (or waived).

**EXHIBITS**

**EXHIBIT A** – Plan of Reorganization

**EXHIBIT B** – Organizational Chart of the Debtor

**EXHIBIT C** – Liquidation Analysis/Financial Projections

THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT  
ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH  
FULLY SET FORTH HEREIN.

**ARTICLE I.**  
**EXECUTIVE SUMMARY**

**This Disclosure Statement is provided for informational purposes only.**

**In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distributions to the Debtor's creditors and interest holders. The Debtor believes that any delay in confirmation of the Plan would result in significant administrative expenses resulting in less value available to the Debtor's constituents. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.**

This Executive Summary is being provided to Holders of Allowed Claims and Equity Interests as an overview of the material items addressed in the Disclosure Statement and the Plan, which is qualified by reference to the entire Disclosure Statement and by the actual terms of the Plan (including all exhibits attached hereto and to the Plan and the Plan Supplement), and should not be relied upon for a comprehensive discussion of the Disclosure Statement and/or the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan of reorganization or liquidation. As such, this Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code. This Disclosure Statement includes, without limitation, information about:

- the Debtor's operating and financial history;
- the significant events that have occurred to date;
- the Confirmation process; and
- the terms and provisions of the Plan, including key aspects of the Claimant Trust and the Reorganized Debtor, certain effects of Confirmation of the Plan, certain risk factors relating to the Plan, and the manner in which distributions will be made under the Plan.

The Debtor believes that any alternative to Confirmation of the Plan would result in significant delays, litigation, and additional costs, and ultimately would diminish the Debtor's value. **Accordingly, the Debtor strongly supports confirmation of the Plan.**

**A. Summary of the Plan**

The Plan represents a significant achievement for the Debtor. As discussed herein, the Plan provides that the Claimant Trust will receive the majority of the Debtor's assets, including Causes of Action. The assets being transferred to the Claimant Trust are referred to, collectively, as the Claimant Trust Assets. The Claimant Trust will – for the benefit of the Claimant Trust

Beneficiaries – monetize the Claimant Trust Assets, pursue the Causes of Action, and work to conclude the various lawsuits and litigation claims pending against the Estate.

The Plan also provides for the reorganization of the Debtor. This will be accomplished by the cancellation of the Debtor’s current Equity Interests, which consist of partnership interests held by: The Dugaboy Investment Trust;<sup>3</sup> the Hunter Mountain Investment Trust (“Hunter Mountain”); Mark Okada, personally and through family trusts; and Strand, the Debtor’s general partner. On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor. The Reorganized Debtor will be managed by the Claimant Trust, as the managing member of New GP LLC.

The Reorganized Debtor will oversee the monetization of the Reorganized Debtor Assets, which consist of, among other Assets, the management of the Managed Funds. The net proceeds from the Reorganized Debtor Assets will ultimately be distributed to the Claimant Trust and available for distribution to the Claimant Trust Beneficiaries.

The following is an overview of certain other material terms of the Plan:

- Allowed Priority Non-Tax Claims will be paid in full;
- Allowed Retained Employee Claims will be Reinstated;
- Allowed Convenience Claims will receive the lesser of (i) 85% of their Allowed Claim or (ii) such Holder’s Pro Rata share of the Convenience Claims Cash Pool (*i.e.*, \$13,150,000). Holders of Convenience Claims can elect the treatment provided to General Unsecured Claims by making the GUC Election on their Ballots;
- Allowed General Unsecured Claims and Allowed Subordinated Claims will receive their Pro Rata share of Claimant Trust Interests. The Claimant Trust Interests distributed to Allowed General Unsecured Claims will be senior to those distributed to Allowed Subordinated Claims as set forth in the Claimant Trust Agreement. Holders of General Unsecured Claims that are liquidated as of the Confirmation Date can elect the treatment provided to Convenience Class Election by reducing their Claims to \$1,000,000 and making the Convenience Class Election on their Ballots; and
- Allowed Class B/C Limited Partnership Interests and Allowed Class A Limited Partnership Interests will receive their Pro Rata share of the Contingent Claimant Trust Interests.

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<sup>3</sup> The Dugaboy Investment Trust is a Delaware trust created to manage the assets of James Dondero and his family.

## **B. An Overview of the Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11 of the Bankruptcy Code, a debtor may remain in possession of its assets and business and attempt to reorganize its business for the benefit of such debtor, its creditors, and other parties in interest. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The commencement of a Chapter 11 case creates an estate comprised of all of the legal and equitable interests of a debtor in property as of the date that the bankruptcy petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession,” unless the bankruptcy court orders the appointment of a trustee. The filing of a bankruptcy petition also triggers the automatic stay provisions of section 362 of the Bankruptcy Code which provide, among other things, for an automatic stay of all attempts to collect prepetition claims from a debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay generally remains in full force and effect until the consummation of a plan of reorganization or liquidation, following confirmation of such plan of reorganization.

The Bankruptcy Code provides that upon commencement of a chapter 11 bankruptcy case, the Office of the United States Trustee may appoint a committee of unsecured creditors and may, in its discretion, appoint additional committees of creditors or of equity interest holders if necessary to assure adequate representation. Please see ARTICLE II for a discussion of the U.S. Trustee and the statutory committees.

Upon the commencement of a chapter 11 bankruptcy case, all creditors and equity interest holders generally have standing to be heard on any issue in the chapter 11 proceedings pursuant to section 1109(b) of the Bankruptcy Code.

The formulation and confirmation of a plan is the principal objective of a chapter 11 case. The plan sets forth the means of satisfying the claims against and equity interests in the debtor.

## **C. Purpose and Effect of the Plan**

### **1. The Plan of Reorganization**

The Debtor is reorganizing pursuant to chapter 11 of the Bankruptcy Code. As a result, the Confirmation of the Plan means that the Debtor’s business will continue to operate following confirmation of the Plan through the Claimant Trust and the Reorganized Debtor to monetize assets for distribution to Holders of Allowed Claims. The Claimant Trust will hold the Claimant Trust Assets and manage the efficient monetization of, the Claimant Trust Assets. The Claimant Trust will also manage the Reorganized Debtor through the Claimant Trust’s ownership of the Reorganized Debtor’s general partner, New GP LLC. The Claimant Trust will also be the sole limited partner in the Reorganized Debtor. The Reorganized Debtor will manage the wind down

of the Managed Funds as well as the monetization of the balance of the Reorganized Debtor Assets. The Claimant Trust will also establish a Litigation Sub-Trust in accordance with the Plan, which will also be for the benefit of the Claimant Trust Beneficiaries. The Litigation Sub-Trust will receive the Estate Claims. The Litigation Trustee shall be the exclusive trustee of the Estate Claims included in the Claimant Trust Assets subject to oversight by the Claimant Trust Oversight Committee

A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or an equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code to the terms and conditions of the confirmed plan, whether or not such Entity voted on the plan or affirmatively voted to reject the plan.

## 2. Plan Overview

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtor. For classification and treatment of Claims and Equity Interests, the Plan designates Classes of Claims and Classes of Equity Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The following chart briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan.<sup>4</sup> Amounts listed below are estimated.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for eight Classes of Claims against and/or Equity Interests in the Debtor.

**The projected recoveries set forth in the table below are estimates only and therefore are subject to change. For a complete description of the Debtor's classification and treatment of Claims or Equity Interests, reference should be made to the entire Plan and the risk factors described in ARTICLE IV below. For certain classes of Claims, the actual amount of Allowed Claims could be materially different than the estimated amounts shown in the table below.**

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<sup>4</sup> This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description.

<b>Class</b>	<b>Type of Claim or Interest</b>	<b>Estimated Prepetition Claim Amount [1]</b>	<b>Impaired</b>	<b>Entitled to Vote</b>	<b>Estimated Recovery</b>
1	Jefferies Secured Claim	\$0.00	No	No	100%
2	Frontier Secured Claim[2]	\$5,209,964	Yes	Yes	100%
3	Other Secured Claims	\$551,116	No	No	100%
4	Priority Non-Tax Claim	\$16,489	No	No	100%
5	Retained Employee Claim	\$0	No	No	100%
6	PTO Claims [3]	\$1,181,886	No	No	100%
7	Convenience Claims[4]	\$12,064,333	Yes	Yes	85.00%
8	General Unsecured Claims[5]	\$180,442,199	Yes	Yes	85.31%
9	Subordinated Claims	Undetermined	Yes	Yes	Undetermined
10	Class B/C Limited Partnership Interests	N/A	Yes	Yes	Undetermined
11	Class A Limited Partnership Interests	N/A	Yes	Yes	Undetermined

[1] Excludes Priority Tax Claims and certain other unclassified amounts totaling approximately \$1.1 million owed to Joshua and Jennifer Terry and Acis under a settlement agreement.

[2] Excludes interest accrued postpetition estimated at \$318,000, which will be paid on the Effective Date. The Liquidation Analysis/Financial Projections provide for the payment of postpetition interest.

[3] Represents outstanding PTO Claims as of September 30, 2020. PTO Claims are subject to adjustment depending on the amount of actual prepetition PTO Claims outstanding as of the Effective Date. PTO claims are accounted for in the Liquidation Analysis/Financial Projections as an administrative claim and will be paid out in ordinary courses pursuant to applicable state law.

[4] Represents the estimated gross prepetition amount of Convenience Claims with a total payout amount estimated at 85% of \$12.06 million, or \$10.25 million. This number includes approximately \$1.113 million of potential Rejection Claims and assumes that Holders of Allowed General Unsecured Claims that are each less than \$2.50 million opt into the Convenience Class.

[5] Assumes no recovery for UBS, the HarbourVest Entities, IFA, Hunter Mountain, and an Allowed Claim of only \$3,722,019 for Mr. Daugherty (each as discussed further below). Assumes \$1.440 million of potential rejection damage claims. The Liquidation Analysis/Financial Projections assume Highland RCP, LP and Highland RCP Offshore, LP offset their Claim of \$4.4 million against amounts owed to the Debtor.

### 3. Voting on the Plan

Under the Bankruptcy Code, acceptance of a plan by a Class of Claims or Equity Interests is determined by calculating the number and the amount of Claims voting to accept, based on the actual total Allowed Claims or Equity Interests voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan. Acceptance by a Class of Equity Interests requires at least two-thirds in amount of the total Allowed Equity Interests in the Class to vote in favor of the Plan.

Under the Bankruptcy Code, only Classes of Claims or Equity Interests that are “Impaired” and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is “Unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is “Impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Plan. Whether a Holder of a Claim or Equity Interest in Class 2 and Class 7 through Class 11 may vote to accept or reject the Plan will also depend on whether the Holder held such Claim or Equity Interest as of November 23, 2020 (the “Voting Record Date”). The Voting Record Date and all of the Debtor’s solicitation and voting procedures shall apply to all of the Debtor’s Creditors and other parties in interest.

Pursuant to the Plan, Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, there are no Classes that will not receive or retain any property and no Classes are deemed to reject the Plan.

#### 4. Confirmation of the Plan

##### (a) Confirmation Generally

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed below.

The confirmation of a plan by the Bankruptcy Court binds the debtor, any issuer of securities under a plan, any person acquiring property under a plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan discharges a debtor from any debt that arose before the confirmation of such plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

##### (b) The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Debtor will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned from time to time without further notice except for an

announcement of the adjourned date made at the Confirmation Hearing of any adjournment thereof.

5. Confirming and Effectuating the Plan

It is a condition to the Effective Date of the Plan that the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Official Committee of Unsecured Creditors (the "Committee"). Certain other conditions contained in the Plan must be satisfied or waived pursuant to the provisions of the Plan.

6. Rules of Interpretation

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meaning ascribed to such terms in the Plan; (2) unless otherwise specified, any reference in this Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document shall be a reference to such document in the particular form or substantially on such terms and conditions described; (3) unless otherwise specified, any reference in this Disclosure Statement to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references in this Disclosure Statement to Sections are references to Sections of this Disclosure Statement; (6) unless otherwise specified, all references in this Disclosure Statement to exhibits are references to exhibits in this Disclosure Statement; (7) unless otherwise set forth in this Disclosure Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in this Disclosure Statement that is not otherwise defined in this Disclosure Statement or the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

7. Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests

As set forth above, Holders of Claims in Class 1 and Class 3 through Class 6 are not entitled to vote on the Plan. As a result, such parties will not receive solicitation packages or ballots but, instead, will receive this a notice of non-voting status, a notice of the Confirmation Hearing, and instructions on how to receive a copy of the Plan and Disclosure Statement.

The Debtor, with the approval of the Bankruptcy Court, has engaged Kurtzman Carson Consultants LLC (the "Voting Agent") to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the "Solicitation Package"):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

- The Bankruptcy Court order approving this Disclosure Statement (the “Disclosure Statement Order”) (excluding exhibits);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- A single Ballot, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the “Voting Instructions”);
- A pre-addressed, postage pre-paid return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

On November 13, 2020, the Debtor filed the Plan Supplement [D.I. 1389] that included, among other things, the form of Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Reorganized Limited Partnership Agreement, New GP LLC Documents, the New Frontier Note, the Senior Employee Stipulation, and the identity of the initial members of the Claimant Trust Oversight Committee. The Plan Supplement also includes a schedule of the Causes of Action that will be retained after the Effective Date. The Plan Supplement may be supplemented or amended through and including December 18, 2020. If the Plan Supplement is supplemented, such supplemented documents will be made available on the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

If you are the Holder of a Claim or Equity Interest and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, via email at [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com) and reference “Highland Capital Management, L.P.” in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. If your Claim or Equity Interest is subject to a pending claim objection and you wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim or Equity Interest for voting purposes or you will not be entitled to vote to accept or reject the Plan. Any such motion must be filed so that it is heard in sufficient time prior to the Voting Deadline to allow for your vote to be tabulated.

**THE DEBTOR, THE REORGANIZED DEBTOR, AND THE CLAIMANT TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.**

8. Instructions and Procedures for Voting

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtor or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 23, 2020, as the Voting Record Date for the determination of the Holders of Claims and Equity Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

**The deadline to vote on the Plan is January 5, 2021 at 5:00 p.m. (prevailing Central Time) (the "Voting Deadline").** In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address, as applicable:

**If by first class mail, personal delivery, or overnight mail to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

**If by electronic voting:**

**You may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot. IMPORTANT NOTE: You will need the Unique Electronic Ballot ID Number and the Unique Electronic Ballot PIN Number set forth on your customized ballot in order to vote via the Balloting Agent's online portal. Each Electronic Ballot ID Number is to be used solely for voting on those Claims or Interests on your electronic ballot. You must complete and submit an electronic ballot for each Electronic Ballot ID Number you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

Only the Holders of Claims and Equity Interests in Class 2 and Class 7 through Class 11 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim and Equity Interest must vote its entire Claim or Equity Interest, as applicable, within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to

reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM OR EQUITY INTEREST IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the Solicitation Package that you have received, or (c) the amount of your Claim or Equity Interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents filed in these Chapter 11 Case may be obtained free of charge on the Voting Agent's website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp) or by calling toll free at: (877) 573-3984, or international at: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at [pacer.uscourts.gov](http://pacer.uscourts.gov). Subject to any rules or procedures that have or may be implemented by the Court as a result of the COVID 19 Pandemic, documents filed in this case may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Central Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, Texas 75242-1496.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") by January 11, 2021. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

**THE DEBTOR URGES HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

9. The Confirmation Hearing

**The Bankruptcy Court has scheduled Confirmation Hearing Dates on January 13, 2021, and January 14, 2021, at 9:30 a.m. prevailing Central time.** The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties-in-interest.

10. The Deadline for Objecting to Confirmation of the Plan

**The Bankruptcy Court has set a deadline of January 5, 2021, at 5:00 p.m. prevailing Central time, for the filing of objections to confirmation of the Plan (the “Confirmation Objection Deadline”).** Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name of the objecting party and the amount and nature of the Claim of such Entity or the amount of Equity Interests held by such Entity; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the parties set forth below (the “Notice Parties”).

**CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE. INSTRUCTIONS WITH RESPECT TO THE CONFIRMATION HEARING AND DEADLINES WITH RESPECT TO CONFIRMATION WILL BE INCLUDED IN THE NOTICE OF CONFIRMATION HEARING APPROVED BY THE BANKRUPTCY COURT.**

11. Notice Parties

- Debtor: Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (Attn: James P. Seery, Jr.);
- Counsel to the Debtor: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4003 (Attn: Jeffrey Pomerantz, Esq.; Ira Kharasch, Esq., and Gregory Demo, Esq.);
- Counsel to the Committee: Sidley Austin, LLP, One South Dearborn, Chicago, Illinois 60603 (Attn: Matthew Clemente, Esq., and Alyssa Russell, Esq.); and
- Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Lisa Lambert, Esq.).

12. Effect of Confirmation of the Plan

The Plan contains certain provisions relating to (a) the compromise and settlement of Claims and Equity Interests; (b) exculpation of certain parties; and (c) the release of claims against certain parties by the Debtor.

**The Plan shall bind all Holders of Claims against and Equity Interests in the Debtor to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder (i) will receive or retain any property or interest in property under the Plan, (ii) has filed a proof of claim in the Chapter 11 Case, or (iii) did not vote to accept or reject the Plan.**

**D. Effectiveness of the Plan**

It will be a condition to the Effective Date of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following confirmation, the Plan will go into effect on the Effective Date.

**E. RISK FACTORS**

**Each Holder of a Claim or an Equity Interest is urged to consider carefully all of the information in this Disclosure Statement, including the risk factors described in ARTICLE IV herein titled, “Risk Factors.”**

**ARTICLE II.**  
**BACKGROUND TO THE CHAPTER 11 CASE AND SUMMARY OF**  
**BANKRUPTCY PROCEEDINGS TO DATE**

**A. Description and History of the Debtor’s Business**

Prior to the Petition Date, the Debtor was a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm evolved over twenty-five years, building on its credit expertise and value-based approach to expand into other asset classes.

As of the Petition Date, the Debtor operated a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor’s investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, the Debtor provided shared services to its affiliated registered investment advisers.

**B. The Debtor’s Corporate Structure**

The Debtor is headquartered in Dallas, Texas. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Debtor’s business. As of the Petition Date, the Debtor employed approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Pursuant to various contractual arrangements, the Debtor, as of the Petition Date, provided money management and advisory services for approximately \$2.5 billion of assets under management shared services for approximately \$7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisers. None of these affiliates filed for Chapter 11 protection. As of September 30, 2020, the Debtor provided money management and advisory services for approximately \$1.641 billion of assets under management and shared services for approximately \$7.136 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisers. Further, on the Petition Date, the value of the Debtor’s Assets was approximately

\$566.5 million. As of September 30, 2020, the total value of Debtor’s Assets totaled approximately \$328.3 million.

The drop in the value of the Debtor’s Assets and assets under management was caused, in part, by the COVID-19 global pandemic. Specifically, the decline was the result of, among other things, the drop in value of the Debtor’s assets generally, the loss of value in the Prime Accounts discussed below, the professional and other costs associated with the Chapter 11 Case, and the reserve of approximately \$59 million against a loan receivable listed as an asset.

<u>Asset</u>	<u>10/16/2019</u>	<u>9/30/2020</u>
Investments (FV)[1]	\$232,620,000	\$109,479,000
Investments (Equity)	\$161,819,000	\$101,213,000
Cash/Cash Equivalents	\$2,529,000	\$5,888,000
Management/Incentive Fees Receivable	\$2,579,000	\$3,350,000
Fixed Assets, net	\$3,754,000	\$2,823,000
Loan Receivables	\$151,901,000	\$93,445,000[2]
Other Assets	\$11,311,000	\$12,105,000
<b>Totals</b>	\$566,513,000	\$328,302,000

[1] Includes decrease in value of assets, costs of Chapter 11 Cases, and assets sold to satisfy liabilities.

[2] Net of reserve of \$59 million.

The Debtor’s organizational chart is attached hereto as Exhibit B. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity.

**C. Business Overview**

The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC (“Jefferies”), as described in additional detail below. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor’s stand-alone annual revenue totaled approximately \$50 million. During calendar year 2019, the Debtor’s stand-alone revenue totaled approximately \$36.1 million.

**D. Prepetition Capital Structure**

1. Jefferies Margin Borrowings (Secured)

The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the “Brokerage Agreement”). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with

Jefferies (the “Prime Account”). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

As of the Petition Date, the Debtor held approximately \$57 million of equity in liquid and illiquid securities (the “Securities”) in the Prime Account. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof.

However, because of the economic distress caused by the COVID-19 global pandemic, the value of the Securities held in the Prime Account dropped since the Petition Date, and Jefferies has exerted significant pressure on the Debtor to liquidate the Securities to satisfy margin calls. As of September 30, 2020, the equity value of the Securities in the Prime Account was approximately \$23.3 million, and the Debtor owed no amounts to Jefferies. The Debtor has been actively selling Securities to cover operating expenses and professional fees.

## 2. The Frontier Bank Loan (Secured)

The Debtor and Frontier State Bank (“Frontier Bank”) are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the “Original Frontier Loan Agreement”), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain First Amended and Restated Loan Agreement (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

Pursuant to that certain Security and Pledge Agreement dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor’s obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the “Frontier Collateral”).

The aggregate principal balance of the Frontier Loan was approximately \$5.2 million. As of September 30, 2020, the value of the Frontier Collateral was approximately \$13.1 million, and approximately \$318,000 in postpetition interest had accrued.

## 3. Other Unsecured Obligations

As discussed below, the Plan provides for four Classes of unsecured claims: (i) PTO Claims, (ii) the Convenience Claims, (iii) the General Unsecured Claims, and (iv) the Subordinated Claims.

The Debtor has various substantial litigation claims asserted against it, which have been classified as General Unsecured Claims. In addition, as of the Petition Date, the Debtor had ordinary course trade debt, unaccrued employee bonus obligations and loan repayment, and

contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that were potentially in the tens of millions of dollars. The Debtor is still assessing these claims and its liability for such amounts. These Claims have been classified as Convenience Claims and Subordinated Claims.

#### 4. Equity Interests

The Debtor is a Delaware limited partnership. As of the Petition Date, the Debtor had three classes of limited partnership interest (Class A, Class B, and Class C). The Class A interests were held by The Dugaboy Investment Trust, Mark Okada, personally and through family trusts, and Strand, the Debtor's general partner. The Class B and C interests were held by Hunter Mountain.

In the aggregate, the Debtor's limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by The Dugaboy Investment Trust, (c) 0.0627% by Mark Okada, personally and through family trusts, and (d) 0.25% by Strand.

#### **E. SEC Filings**

The Debtor is an investment adviser registered with the SEC as required by the Investment Advisers Act of 1940. As a registered investment adviser, the Debtor is required to file (at least annually) a Form ADV. The Debtor's current Form ADV is available at <https://adviserinfo.sec.gov/>.

Following the Effective Date, it is anticipated that the Reorganized Debtor will maintain its registration with the SEC as a registered investment adviser.

#### **F. Events Leading Up to the Debtor's Bankruptcy Filings**

The Chapter 11 Case was precipitated by the rendering of an Arbitration Award (as that term is defined below) against the Debtor on May 9, 2019, by a panel of the American Arbitration Association (the "Panel"), in favor of the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Funds (the "Crusader Funds") that were formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Funds' investors, as the Crusader Funds' assets lost significant value.

On October 15, 2008, the Debtor placed the Crusader Funds in wind-down, thereby compulsorily redeeming the Crusader Funds' limited partnership interests. The Debtor also declared that it would liquidate the Crusader Funds' remaining assets and distribute the proceeds to investors.

However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a Joint Plan of Distribution of the Crusader Funds

(the “Crusader Plan”), and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors (the “Crusader Scheme”), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Funds’ investors to oversee the Debtor’s management of the Crusader Funds.

Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of \$1.2 billion to the Crusader Funds’ investors. The Debtor distributed a further \$315.3 million through June 2016.

However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the “Arbitration”), and (c) commenced litigation in Delaware Chancery Court, to, among other things, obtain a status quo order in aid of the arbitration, which order was subsequently entered.

Following an evidentiary hearing, the Panel issued (a) a *Partial Final Award*, dated March 6, 2019 (the “March Award”), (b) a *Disposition of Application for Modification of Award*, dated March 14, 2019 (the “Modification Award”), and (c) a *Final Award*, dated May 9, 2019 (the “Final Award” and together with the March Award and the Modification Award, the “Arbitration Award”). Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages against the Debtor in the aggregate amount of \$136,808,302; as of the Petition Date, the total value of the Arbitration Award was \$190,824,557, inclusive of interest

Prior to the Petition Date, the Redeemer Committee moved in the Chancery Court to confirm the Arbitration Award. For its part, the Debtor moved to vacate parts of the Final Award contending that certain aspects were procedurally improper. The Redeemer Committee’s motion to confirm the Arbitration Award and the Debtor’s motion to vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day the Debtor filed for bankruptcy

On the Petition Date, the Debtor believed that the aggregate value of its assets exceeded the amount of its liabilities; however, the Debtor filed the Chapter 11 Case because it did not have sufficient liquidity to immediately satisfy the Award or post a supersedeas bond necessary to pursue an appeal.

### **G. Additional Prepetition Litigation**

In addition to the litigation with the Redeemer Committee described above, the Debtor, both directly and through certain subsidiaries, affiliates, and related entities, was party to substantial prepetition litigation. Although the Debtor disputes the allegations raised in this litigation and believes it has substantial defenses, this litigation has resulted in substantial Claims against the Debtor’s Estate, each of which has been classified as a General Unsecured Claim. To the extent that these litigation Claims cannot be resolved consensually, they will be litigated by the Claimant Trustee or Reorganized Debtor, as applicable. The Debtor’s major prepetition litigation is as follows:

- Redeemer Committee: The dispute with the Redeemer Committee is described in ARTICLE II.F above. As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves the Redeemer Committee's claims against the Estate; however, that order is currently subject to appeal.
- Acis Capital Management, L.P., & Acis Capital Management GP, LLC: On January 30, 2018, Joshua Terry filed involuntary bankruptcy petitions against both Acis Capital Management, L.P. ("Acis LP") and its general partner, Acis Capital Management GP, LLC ("Acis GP," and collectively with Acis LP, "Acis") in the Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Judge Jernigan presiding (the same judge presiding over the Chapter 11 Case), Case No. 18-30264-SGJ (the "Acis Case"). Mr. Terry had been an employee of the Debtor and a limited partner of Acis LP. Mr. Terry was terminated in June 2016, and obtained a multi-million dollar arbitration award against Acis. Overruling various objections, the Bankruptcy Court entered the orders for relief for the Acis debtors in April 2018, and a chapter 11 trustee was appointed. The Debtor filed a proof of claim against Acis and an administrative claim. Acis disputes the Debtor's claim, and the Debtor has not received any distributions on its claim to date. On January 31, 2019, Acis's chapter 11 plan was confirmed, and Mr. Terry become the sole owner of reorganized Acis. Several appeals remain pending, including an appeal of the entry of the Acis orders for relief and the Acis confirmation order.

The Acis trustee commenced a lawsuit against the Debtor, among others, alleging fraudulent conveyance and other causes of action in relation to the Debtor's alleged prepetition effort to control and transfer away Acis's assets to avoid paying Mr. Terry's claim. After the confirmation of the Acis plan, reorganized Acis allegedly supplanted the Acis Trustee as plaintiff and filed an amended complaint against the Debtor and other defendants, which claims comprise Acis's pending proof of claim against the Debtor.

As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves Acis's claims against the Estate; however, that order is currently subject to appeal.

- UBS Securities LLC and UBS AG London Branch: UBS Securities LLC ("UBS Securities") filed a proof of claim in the amount of \$1,039,957,799.40 [Claim No. 190] (the "UBS Securities Claim"), and UBS AG, London Branch ("UBS London," and together with UBS Securities, "UBS") filed a substantively identical proof of claim in the amount of \$1,039,957,799.40 [Claim No. 191] (the "UBS London Claim" and together with the UBS Securities Claim, the "UBS Claim"). The UBS Claim was based on the amount of a judgment UBS received on a breach of contract claim against funds related to the Debtor that were unable to honor margin calls in 2008. Although the Debtor had no obligation under UBS's contracts with the funds, UBS alleges the Debtor is liable for the judgment because it (i) breached an alleged duty to ensure that the funds could pay UBS, (ii) caused or permitted \$233 million in alleged fraudulent transfers to be made by

Highland Financial Partners, L.P. (“HFP”) in March 2009, and (iii) is an alter ego of the funds. The Debtor believes there are meritorious defenses to most, if not all, of the UBS Claim for numerous reasons, including: (i) decisions by the New York Appellate Division that limited UBS’s claims to the March 2009 transfers that it alleges were fraudulent; (ii) those decisions should also apply to any alter ego claim (which at this time has not been formally asserted against the Debtor); (iii) UBS settled claims relating to \$172 million of the \$233 million in alleged fraudulent transfers and the Debtor is covered by the release; and (iv) the March 2009 transfers were in any event part of a wholly legitimate transaction that did not target UBS and for which HFP received fair consideration. Those and several additional defenses are described in the *Debtor’s Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 928].

On October 19, 2020, both the Debtor and the Redeemer Committee filed motions seeking partial summary judgment of the UBS Claim, which, if granted, will significantly decrease the UBS Claim.<sup>5</sup> UBS responded to these motions on November 6, 2020 [D.I. 1341]. On November 20, 2020, the Bankruptcy Court granted partial summary judgment in favor of the Debtor and the Redeemer Committee. It is anticipated that the Bankruptcy Court will enter a formal order within the next couple of weeks.

- Patrick Daugherty: Patrick Daugherty has Filed a Proof of Claim for “at least \$37,483,876.62” [Claim Nos. 67; 77] (the “Daugherty Claim”).<sup>6</sup> Mr. Daugherty is a former limited partner and employee of the Debtor. The Daugherty Claim has three components, and Mr. Daugherty asserts claims: (1) for indemnification for any taxes Mr. Daugherty is required to pay as a result of the IRS audit of the Debtor’s 2008-2009 tax return; (2) for defamation arising from a 2017 press release posted by the Debtor; and (3) arising from a pending Delaware lawsuit against the Debtor, which seeks to recover a judgment of \$2.6 million in respect of Highland Employee Retention Assets (“HERA”), plus interest, from assets Mr. Daugherty claims were fraudulently transferred to the Debtor. The Daugherty Claim also seeks (a) the value of Mr. Daugherty’s asserted interest in HERA, which he values at approximately \$26 million; and (b) indemnification for fees incurred in the Delaware action and in previous litigation in Texas State Court. The Debtor believes that the Daugherty Claim should be allowed in the amount of

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<sup>5</sup> See *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1180]; *Debtor’s Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1181]; *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1183]; and *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor’s Motion for Partial Summary Judgment on Proof of Claim No. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1186].

<sup>6</sup> On October 23, 2020, Mr. Daugherty filed *Patrick Hagaman Daugherty’s Motion for Leave to Amend Proof of Claim No. 77* [D.I. 1280] pursuant to which Mr. Daugherty has asked leave to amend the Daugherty Claim to assert damages of \$40,710,819.42. On November 17, 2020, the Bankruptcy Court approved Mr. Daugherty’s request to amend the Daugherty Claim from the bench.

\$3,722,019; however, the Debtor believes, for various reasons, that the balance of the Daugherty Claim lacks merit. The Debtor's defenses to the Daugherty Claim are described in the *Debtor's (i) Objection to Claim No. 77 of Patrick Hagaman Daugherty and (ii) Complaint to Subordinate Claim of Patrick Hagaman Daugherty* [D.I. 1008].

## H. The Debtor's Bankruptcy Proceeding

On October 16, 2019, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Case to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").<sup>7</sup> The Debtor continues to operate its business and manage its properties as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the later of the Effective Date and the date indicated in any order providing for the implementation of such stay or injunction.

## I. First Day Relief

On or about the Petition Date, the Debtor filed certain "first day" motions and applications (the "First Day Motions") with the Delaware Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case and to facilitate the Debtor's transition to debtor-in-possession status. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Frank Waterhouse in Support of First Day Motions* [D.I. 11] (the "First Day Declaration"). At a hearing on October 19, 2019, the Delaware Bankruptcy Court granted virtually all of the relief initially requested in the First Day Motions [D.I. 39, 40, 42-44].

The Delaware Bankruptcy Court subsequently entered an order authorizing the Debtor to pay critical vendor claims on a final basis [D.I. 168]. Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Bankruptcy Court entered an order authorizing the Debtor to continue its cash management system on a final basis [D.I. 379].

The First Day Motions, the First Day Declaration, and all orders for relief granted in this case can be viewed free of charge at <https://www.kccllc.net/hcmlp>.

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<sup>7</sup> All docket reference numbers refer to the docket maintained by the Bankruptcy Court.

## J. Other Procedural and Administrative Motions

On and after the Petition Date, the Debtor also filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case, including:

- Interim Compensation Motion. On October 29, 2019, the Debtor filed the *Debtor's Motion Pursuant o Sections 105(a), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 72] (the "Interim Compensation Motion"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to section 330 and 331 of the Bankruptcy Code. On November 14, 2019, the Delaware Bankruptcy Court entered an order granting the Interim Compensation Motion [D.I. 141].
- Ordinary Course Professionals. On October 29, 2019, the Debtor filed the Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [D.I. 75] (the "OCP Motion"). The OCP Motion sought authority for the Debtor to retain and compensate certain professionals in the ordinary course of its business. On November 26, 2019, the Delaware Bankruptcy Court entered an order granting the OCP Motion [D.I. 176].
- Retention Applications. During the course of the chapter 11 case, the Delaware Bankruptcy Court or Bankruptcy Court, as applicable, have approved a number of applications by the Debtor seeking to retain certain professionals pursuant to sections 327, 328 and/or 363 of the Bankruptcy Code, including Pachulski Stang Ziehl & Jones LLP as legal counsel [D.I. 183], Development Specialists, Inc. as chief restructuring officer and financial advisor [D.I. 342], Kurtzman Carson Consultants LLC as administrative advisor [D.I. 74], Mercer (US) Inc. as compensation consultant [D.I. 381], Hayward & Associates PLLC as local counsel [D.I. 435], Foley Gardere, Foley & Lardner LLP as special Texas counsel [D.I. 513], Deloitte Tax LLP as tax services provider [D.I. 551], Wilmer Cutler Pickering Hale and Dorr LLP as regulatory and compliance counsel [D.I. 669], and Hunton Andrews Kurth LLP as special tax counsel [D.I. 763].

## K. United States Trustee

While the Chapter 11 Case was pending in the Delaware Bankruptcy Court, the U.S. Trustee for Region 3 appointed Jane Leamy as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Delaware U.S. Trustee"). Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Delaware U.S. Trustee no longer represented the U.S. Trustee, and the U.S. Trustee for Region 6 appointed Lisa Lambert as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Texas U.S. Trustee," and together with the

Delaware U.S. Trustee, the “U.S. Trustee”). The Debtor has worked cooperatively to address concerns and comments from the U.S. Trustee’s office during this Chapter 11 Case.

#### **L. Appointment of Committee**

On October 29, 2019, the Delaware U.S. Trustee appointed the Committee in this Chapter 11 Case [D.I. 65]. The members of the Committee are (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP, LLP. Meta-E Discovery is a vendor to the Debtor. The other members of the Committee are litigants in prepetition litigation with the Debtor as described in ARTICLE II.G. The Bankruptcy Court approved the retention of Sidley Austin LLP as counsel to the Committee [D.I. 334], Young Conaway Stargatt & Taylor, LLP as Delaware co-counsel to the Committee [D.I. 337], and FTI Consulting, Inc. as financial advisor to the Committee [D.I. 336].

#### **M. Meeting of Creditors**

The meeting of creditors under section 341(a) of the Bankruptcy Code was initially scheduled for November 20, 2019, at 9:30 a.m. (prevailing Eastern Time) at the J. Caleb Boggs Federal Building, 844 N. King Street, Room 3209, Wilmington, Delaware 19801, and was rescheduled to December 3, 2019, at 10:30 a.m. (prevailing Eastern Time). At the meeting of creditors, the Delaware U.S. Trustee and creditors asked questions of a representative of the Debtor.

Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Texas U.S. Trustee scheduled an additional meeting of creditors under section 341(a) for January 9, 2020, at 11:00 a.m. (prevailing Central Time) at the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242, at the conclusion of that meeting, the Texas U.S. Trustee continued the meeting to January 22, 2020. The Texas U.S. Trustee and creditors asked questions of a representative of the Debtor at the January 9 and January 22, 2020 meetings.

#### **N. Schedules, Statements of Financial Affairs, and Claims Bar Date**

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”) on December 19, 2019 [D.I. 247-248]. A creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated or disputed may have elected to file a proof of claim against the Debtor.

The Bankruptcy Court established (i) April 8, 2020 as the deadline for Creditors (other than governmental units) to file proofs of claim against the Debtor; (ii) April 13, 2020, as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code), (iii) April 23, 2020, and as the deadline for any investors in any fund managed by the Debtor to file proofs of claim against the Debtor; and (iv) May 26, 2020 as the deadline for the Debtor’s employees to file proofs of claim against the Debtor pursuant to and accordance with Court’s order entered on April 3, 2020 [D.I. 560].<sup>8</sup> Consequently, the bar date for filing proofs

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<sup>8</sup> During the course of its Chapter 11 Case, the Debtor entered into stipulations to extend the Bar Date for certain other claimants or potential claimants.

of claims has passed and any claims filed after the applicable bar date will be considered late filed.

#### **O. Governance Settlement with the Committee**

On January 9, 2020, the Bankruptcy Court entered the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [D.I. 339] (the “Settlement Order”).

Among other things, the Settlement Order approved a term sheet (the “Term Sheet”) agreed to by the Debtor and the Committee pursuant to which the Debtor agreed to abide by certain protocols governing the production of documents and certain protocols governing the operation of the Debtor’s business (the “Operating Protocols”). Under the Operating Protocols, the Debtor agreed to seek consent from the Committee prior to entering into certain “Transactions” (as defined in the Operating Protocols. The Operating Protocols were amended on February 21, 2020, with the consent of the Committee [D.I. 466].

Pursuant to the Term Sheet, the Debtor also granted the Committee standing to pursue certain estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and the Related Entities (as defined in the Operating Protocols) (collectively, the “Estate Claims”). To the extent permitted, the Estate Claims and the ability to pursue the Estate Claims are being transferred to either the Claimant Trust or Litigation Sub-Trust pursuant to the Plan.

In connection with the Settlement Order, an independent board of directors was also appointed at Strand, the Debtor’s general partner (the “Independent Board”). The members of the Independent Board are John S. Dubel, James P. Seery, Jr., and Russell Nelms. The Independent Board was tasked with managing the Debtor’s operations during the Chapter 11 Case and facilitating a reorganization or orderly liquidation of the Debtor’s Estate.

#### **P. Appointment of James P. Seery, Jr., as Chief Executive Officer and Chief Restructuring Officer**

Following their appointment in January 2020, the Independent Board determined that it would be more efficient for the Debtor to have a traditional corporate management structure, i.e. a fully engaged chief executive officer supervised by the Independent Board. The Independent Board ultimately determined that Mr. Seery – a member of the Independent Board – had the requisite experience and expertise to lead the Debtor. On June 23, 2020, the Debtor filed *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [D.I. 774] (the “Seery Retention Motion”) to retain Mr. Seery as chief executive officer, chief restructuring officer, and foreign representative.

The Bankruptcy Court entered an order approving the Seery Retention Motion on July 16, 2020 [D.I. 854]. Mr. Seery was retained as the Debtor’s chief executive officer and the duties of Bradley Sharp of DSI as the Debtor’s chief restructuring officer and foreign representative were transferred to Mr. Seery.

## Q. Mediation

On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [D.I. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation and appointed Sylvia Mayer and Allan Gropper as the mediators (the “Mediators”). The mediation began on August 27, 2020, and is still open as of the date of this Disclosure Statement

## R. Postpetition Settlements

### 1. Settlement with Acis and the Terry Parties

With the assistance of the Mediators, on September 9, 2020, (i) the Debtor, (ii) Acis LP, (iii) Acis GP, and (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (together, the “Terry Parties”) executed that certain Settlement Agreement and General Release. On September 23, 2020, the Debtor filed the *Debtor’s Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [D.I. 1087] (the “Acis Settlement Motion”).

The Settlement Agreement and General Release contain the following material terms, among others:

- The proof of claim filed by Acis [Claim No. 23] will be Allowed in the amount of \$23,000,000 as a General Unsecured Claim.
- On the Effective Date of the Plan (or any other plan of reorganization confirmed by the Bankruptcy Court), the Debtor will pay in cash to:
  - Mr. and Mrs. Terry in the amount of \$425,000 plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed by the Terry Parties [Claim No. 156];
  - Acis LP in the amount of \$97,000, which amount represents the legal fees incurred by Acis LP with respect to the *NWCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195/2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP [Claim No. 159]; and
  - Mr. Terry in the amount of \$355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

The Settlement Agreement also provides that within five days of the Bankruptcy Court's approval of the Settlement Agreement and the General Release, the Debtor will move to withdraw, with prejudice, the proofs of claim that the Debtor filed in the Acis bankruptcy cases and the motion filed by the Debtor in the Acis bankruptcy cases seeking an administrative claim for postpetition services provided to Acis.

On October 5, 2020, James Dondero filed an objection to the Acis Settlement Motion [D.I. 1121] (the "Dondero Objection"). On October 28, 2020, the Bankruptcy Court entered an order approving the Acis Settlement Motion and overruling the Dondero Objection in its entirety [D.I. 1347]. On November 9, 2020, Mr. Dondero filed a notice of his intent to appeal the order approving the Acis Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Acis Settlement Motion and related documents for additional information on the Settlement Agreement and General Release.

## 2. Settlement with the Redeemer Committee

The Debtor, Eames, Ltd., the Redeemer Committee, and the Crusader Funds (collectively, the "Settling Parties") executed a settlement (the "Redeemer Stipulation"). The Redeemer Stipulation was also executed, solely with respect to paragraphs 10 through 15 thereof, by Hockney, Ltd., Strand, Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO, L.P., House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC (collectively, the "Additional Release Parties"). On September 23, 2020, the Debtor filed *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [D.I. 1089] seeking approval of the Redeemer Stipulation (the "Redeemer Settlement Motion").

The Redeemer Stipulation contains the following material terms, among others:

- The proof of claim filed by the Redeemer Committee [Claim No. 72] will be Allowed in the amount of \$137,696,610 as a General Unsecured Claim;
- The proof of claim filed by the Crusader Funds [Claim No. 81] will be Allowed in the amount of \$50,000 as a General Unsecured Claim;
- The Debtor and Eames, Ltd., each (a) consented to the cancellation of certain interests in the Crusader Funds held by them, and (b) agreed that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable Donor Advised Fund;4
- The Debtor and Eames each acknowledged that they will not receive any portion of certain reserved distributions, and the Debtor further acknowledged that it will not receive any payments from the Crusader Funds in respect of any deferred fees, distribution fees, or management fees;

- The Debtor and the Redeemer Committee agreed to a form of amendment to the shareholders' agreement for Cornerstone Healthcare Group and to a process to monetize Cornerstone Healthcare Group;
- Upon the effective date of the Redeemer Stipulation, the Settling Parties and the Additional Release Parties shall exchange releases as set forth in the Redeemer Stipulation; and
- All litigation between the Debtor, Eames, Ltd., and the Additional Highland Release Parties (as defined in the Redeemer Stipulation) on the one hand, and the Redeemer Committee and the Crusader Funds, on the other hand, will cease.

On October 16, 2020, UBS filed an objection to the Redeemer Settlement Motion [D.I. 1190] (the "UBS Objection"). On October 22, 2020, the Bankruptcy Court entered an order approving the Redeemer Settlement Motion and overruling the UBS Objection in its entirety [D.I. 1273]. On November 6, 2020, UBS filed a notice of its intent to appeal the order approving the Redeemer Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Redeemer Settlement Motion and related documents for additional information on the Redeemer Stipulation.

## **S. Certain Outstanding Material Claims**

As discussed above, April 8, 2020, was the general bar date for filing proofs of claim. The Debtor has begun the process of resolving those Claims. Although each Claim represents a potential liability of the Estate, the Debtor believes that, in addition to UBS's Claim, the Claims filed by Integrated Financial Associates, Inc. ("IFA"), the HarbourVest Entities,<sup>9</sup> and Hunter Mountain represent the largest unresolved Claims against the Estate.

- IFA Proof of Claim. IFA filed a proof of claim [Claim No. 93] (the "IFA Claim") seeking damages in the amount of \$241,002,696.73 arising from the purported joint control of the Debtor and NexBank, SSB, and the Debtor's management of various lenders to IFA. The Debtor believes that IFA's claim should be disallowed in its entirety. IFA's claim and the Debtor's defenses thereto are described in greater detail in the *Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 868]. On October 4, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 1126], which capped the IFA Claim, for all purposes, at \$8,000,000.
- HarbourVest Entities Proofs of Claim. The HarbourVest Entities are investors in Highland CLO Funding, Ltd. ("HCLOF") and filed proofs of claim against the

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<sup>9</sup> "HarbourVest Entities" means HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

Debtor's Estate [Claim No. 143, 147, 149, 150, 153, 154] (the "HarbourVest Claims"). The Debtor included an assertion of "no liability" in respect of the HarbourVest Claims in its Debtor's *First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No-Liability Claims; and (f) Insufficient Documentation Claims* [D.I. 906]. HarbourVest provided a response in its *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [D.I. 1057]. The HarbourVest Entities' response argued that the Debtor's objection should be overruled, and set forth allegations in support of claims under federal and state law and Guernsey law, including claims for fraud, violations of securities laws, breaches of fiduciary duties, and RICO violations. The Debtor intends to vigorously defend the HarbourVest Claims on various grounds, including, among others, the failure to state a claim upon which relief can be granted, the lack of reasonable reliance, the lack of misrepresentations, the lack of reasonable reliance, the failure to mitigate damages, the parties' agreements bar or otherwise limit the Debtor's liability, and waiver and estoppel. The HarbourVest Entities invested approximately \$80 million in HCLOF but seek an allowed claim in excess of \$300 million dollars (after giving effect to treble damages for the alleged RICO violations).

- Hunter Mountain Proof of Claim. Hunter Mountain is one of the Debtor's limited partners. Hunter Mountain filed a proof of claim [Claim No. 152] seeking a \$60,298,739 indemnification claim against the Debtor because of the Debtor's alleged failures to make priority distributions to Hunter Mountain under the Debtor's Partnership Agreement. The Debtor believes that it has meritorious defenses to Hunter Mountain's claim. Hunter Mountain's claim and the Debtor's defenses to such claim are described in greater detail in the *Debtor's (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* [D.I. 995]. The Debtor believes that Hunter Mountain's proof of claim should either be disallowed in its entirety or subordinated in its entirety.

In addition to the foregoing, the UBS Claim (in the amount of \$1,039,957,799.40) and the Daugherty Claim (in the amount of \$40,710,819.42) remain outstanding. As set forth above, partial summary judgment on the UBS Claim was granted in favor of the Debtor and the Redeemer Committee on November 20, 2020, and a formal order is expected to be entered within the next couple of weeks.

The Daugherty Claim has been allowed for voting purposes only in the amount of \$9,134,019 [D.I. 1422]. In a bench ruling on November 20, 2020, the Bankruptcy Court allowed UBS Claims for voting purposes only in the amount of \$94,761,076 [D.I. 1646].

## **T. Treatment of Shared Service and Sub-Advisory Agreements**

As discussed in the Plan, the Reorganized Debtor will manage the wind down of the Managed Funds. However, it is not anticipated that either the Reorganized Debtor or the

Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities<sup>10</sup> pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities.

Currently, the Debtor receives approximately \$2.2 million per month in revenue from such contracts. However, in order to service those contracts, the Debtor must maintain a full staff and the cost of providing services under such contracts, among other factors, has historically resulted in a net loss to the Debtor. As such, the Debtor does not believe that assuming these contracts would benefit the Estate.

Further, the contracts generally contain anti-assignment provisions which the Debtor believes may be enforceable under 11 U.S.C. § 365(c). These provisions, therefore, would arguably prevent the assignment of such contracts without the consent of the Debtor's contract counterparty. However, even if 11 U.S.C. § 365(c) would not prevent assignment, the contracts are generally terminable at will by either party. As such, assuming and assigning such contracts without the consent of the contract counterparty would be of nominal or no benefit to the Estate. It is doubtful that any assignee would provide consideration to the Debtor for the assignment of such contract as the contract counterparty could simply terminate the contract immediately following assignment. As such, the Debtor does not believe that there is any benefit to the Estate in attempting to assign these contracts.

Notwithstanding the foregoing disclosure, the Debtor is currently assessing whether it is both possible and in the best interests of the Estate to assume and assign such shared services and sub-advisory agreements to a Related Entity.

During the course of this Chapter 11 Case, Mr. Daugherty stated that he would be willing to assume the Debtor's obligations under the shared service and sub-advisory contracts. The Independent Directors reviewed Mr. Daugherty's proposal and for the foregoing reasons, among others, determined that it was not workable and would provide no benefit to the Estate.

#### **U. Portfolio Managements with Issuer Entities**

The Debtor is party to certain portfolio management agreements (including any ancillary agreements relating thereto collectively being the "Portfolio Management Agreements" and each a "Portfolio Management Agreement") with ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd. (each an "Issuer" and collectively the "Issuers") wherein the Debtor agreed to generally provide certain services to each Issuer in the Debtor's capacity as a portfolio manager in exchange for certain fees as described in the applicable Portfolio Management Agreement.

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<sup>10</sup> For the avoidance of doubt, the Debtor does not consider any of the Issuers (as defined herein) to be a Related Entity.

The Issuers filed proofs of claim [Claim No. 165, 168, and 169] asserting claims against the Debtor for damages arising from, relating to or otherwise concerning (i) such Issuer's Portfolio Management Agreement(s) with the Debtor, including, without limitation, failure to perform or other breach of the Portfolio Management Agreement(s), rejection of the Portfolio Management Agreement(s), any cure amount as a result of assumption of the Portfolio Management Agreement(s), any adequate assurance of future performance as a result of assumption of the Portfolio Management Agreement(s), and any failure to provide and pay for indemnification or other obligations under the Portfolio Management Agreement(s); and (ii) the action or inaction of the Debtor to the detriment of such Issuer (collectively, the "Issuer Claims"). The Debtor believes that it has satisfied its obligations to the Issuers; that the Issuer Claims lack merit; and that the Debtor will have no liability with respect to the Issuer Claims. However, such proofs of claim remain outstanding.

The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

#### **V. Resignation of James Dondero**

On October 9, 2020, Mr. Dondero resigned as an employee and portfolio manager of the Debtor.

#### **W. Exclusive Periods for Filing a Plan and Soliciting Votes**

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization; however, a court may extend these periods upon request of a party in interest and "for cause."

The Debtor filed motions to extend the exclusive period, and the Bankruptcy Court entered the following orders granting such applications:

- Order Granting Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 460];
- Agreed Order Extending Exclusive Periods by Thirty Days [D.I. 668];

- Order Granting Debtor’s Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 820]; and
- Order Further Extending the Debtor’s Exclusive Period for Solicitation of Acceptance of a Chapter 11 Plan [D.I. 1092].

Pursuant to the foregoing orders, the Bankruptcy Court extended the exclusivity period through June 12, 2020, for the filing of a plan, which was subsequently extended through July 13, 2020, and again through August 12, 2020. The Bankruptcy Court also extended the exclusivity period for the solicitation of votes to accept such plan through August 11, 2020, which was subsequently extended through September 10, 2020, and again through October 13, 2020, and December 4, 2020.

#### **X. Negotiations with Constituents**

The Debtor, Mr. Dondero, and certain of the creditors have been negotiating a consensual reorganization plan for the Debtor that contemplates the Debtor continuing its business largely in its current form. Those negotiations have yet to reach conclusion but are continuing, and the negotiations were part of the previously discussed mediation. There is no certainty that those negotiations will reach a consensual resolution of the Debtor’s bankruptcy case.

#### **Y. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461.

The Debtor is the contributing sponsor of the Pension Plan. As such, the PBGC asserts that Debtor is liable to contribute to the Pension Plan the amounts necessary to satisfy the minimum funding standards in ERISA and the Internal Revenue Code of 1986, as amended (“IRC”). See 29 U.S.C. §§ 1082, 1083; 26 U.S.C. §§ 412, 430. As the sponsor of the Pension Plan, the PBGC asserts Debtor is also liable for insurance premiums owed to PBGC. See 29 U.S.C. §§ 1306, 1307. The PBGC asserts that any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) are also jointly and severally liable with the Debtor for such obligations relating to the Pension Plan.

The Pension Benefit Guaranty Corporation (“PBGC”), the federal agency that administers the pension insurance program under Title IV of ERISA, filed contingent proofs of claims against the Debtors for (1) the Pension Plan’s potential underfunded benefit liabilities; (2) the potential unliquidated unpaid minimum funding contributions owed to the Pension Plan; and (3) the potential unliquidated insurance premiums owed to PBGC. The PBGC acknowledges that, as of the date of this Disclosure Statement, there is nothing currently owed by the Debtor to the PBGC.

The Debtor reserves the right to contest any claims filed by the PBGC for any reason.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

No provision contained in the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof), shall be construed as discharging, releasing, exculpating, or relieving any person or entity, including the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, government policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions for satisfaction, release, injunction, exculpation, and discharge of claims in the Plan, Confirmation Order, or the Bankruptcy Code.

**ARTICLE III.**  
**SUMMARY OF THE PLAN**

**THIS ARTICLE III IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ARTICLE III AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL CONTROL AND GOVERN.**

**A. Administrative and Priority Tax Claims**

**1. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions

relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## 2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

3. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**B. Classification and Treatment of Classified Claims and Equity Interests**

1. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

2. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

3. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

Please refer to “Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests” and “Instructions and Procedures for Voting” in ARTICLE I.C.7 and ARTICLE I.C.8 for a discussion of how the how votes on the Plan will be solicited and tabulated.

4. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

5. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

6. Cramdown

If any Class of Claims or Equity Interests is deemed to reject the Plan or does not vote to accept the Plan, the Debtor may (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with the terms of the Plan and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**C. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

The New Frontier Note will include the following terms: (i) an extension of the maturity date to December 31, 2022; (ii) quarterly interest only payments; (iii) a payment on the New Frontier Note equal to fifty percent of the outstanding principal on December 31, 2021, if the New Frontier Note is not paid in full on or prior to such date; (iv) mandatory prepayments from the proceeds of the sale of any collateral securing the New Frontier Note; and (v) the payment of fees and expenses incurred in negotiating the terms of the New Frontier Note.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

“PTO Claims” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is

Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

“*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

“*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

By making the GUC Election on their Ballots, each Holder of a Convenience Claim can elect the treatment provided to General Unsecured Claims.

8. *Class 8 – General Unsecured Claims*

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes the Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and

will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.

“*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

“*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

9. *Class 9 – Subordinated Claims*

- *Classification:* Class 9 consists of the Subordinated Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.

“*Subordinated Claim*” means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a

Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **E. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

#### **F. Means for Implementation of the Plan**

##### **1. Summary**

The Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in the Plan and the Claimant Trust Agreement.

2. The Claimant Trust<sup>11</sup>

(a) *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant

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<sup>11</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

(a) *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

(b) *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in the Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in Article IV.C of the Plan.

(c) *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

(d) *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

- the payment of the Claimant Trust Expenses;
- the payment of other reasonable expenses of the Claimant Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- the orderly monetization of the Claimant Trust Assets;
- litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

- the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- the payment of other reasonable expenses of the Litigation Sub-Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

(e) *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(f) *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

(g) *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(h) *Tax Reporting.*

The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

(i) *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in the Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

(j) *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

(k) *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

(l) *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

(m) *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

3. The Reorganized Debtor

(a) *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

(b) *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

(c) *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

(d) *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

(e) *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

(f) *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in the Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court

(g) *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in Article IV.B.1 of the Plan, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

4. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement

of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with the Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

5. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

6. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the

cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

7. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

8. Control Provisions

To the extent that there is any inconsistency between the Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, the Plan shall control.

9. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under Article III.C of the Plan shall receive no Plan Distributions.

10. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I of the Plan) and fully enforceable as if stated in full herein.

11. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal

Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

#### **A. Treatment of Executory Contracts and Unexpired Leases**

##### **1. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts

and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [D.I. 1122].

## 2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

## 3. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with the Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to Article V.C of the Plan shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to Article V.C of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

## **B. Provisions Governing Distributions**

### **1. Dates of Distributions**

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in the Plan. Except as otherwise provided in the Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to the Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under the Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

## 2. Distribution Agent

Except as provided herein, all distributions under the Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

## 3. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

## 4. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

As used above, "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant

Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

“*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

HarbourVest and Mr. Daugherty have objected to the mechanisms for calculating the amount of the Disputed Claims Reserve with respect to the HarbourVest Claim and the Daugherty Claim, respectively, and intend to press their objections at the hearing for confirmation of the Plan.

5. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

6. Rounding of Payments

Whenever the Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under the Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under the Plan.

7. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under the Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in Article VI.I of the Plan within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

8. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in the Plan, all distributions shall be made pursuant to the terms of the Plan and the Confirmation Order. Except as otherwise provided in the Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

9. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under the Plan, unless the Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under the Plan shall not be subject to any claim by any Person.

10. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under the Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

11. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under the Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

12. Withholding Taxes

In connection with the Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under the Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

13. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

14. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to Article IV of the Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

15. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by the Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with Article VI.O of the Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under the Plan, be deemed to have surrendered such security or note to the Distribution Agent.

### **C. Procedures for Resolving Contingent, Unliquidated and Disputed Claims**

#### **1. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

#### **2. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of the Plan.

#### **3. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

#### **4. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

#### *Allowance of Claims*

After the Effective Date and subject to the other provisions of the Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and

defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

#### *Estimation*

Subject to the other provisions of the Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with the Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

#### *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

#### **D. Effectiveness of the Plan**

##### **1. Conditions Precedent to the Effective Date**

The Effective Date of the Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of Article VIII.B of the Plan of the following:

- the Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to the Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate the Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in the Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under the Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (iii) the implementation of the Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.
- All documents and agreements necessary to implement the Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement the Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to the Plan in an amount determined by the Debtor in good faith.

2. Waiver of Conditions

The conditions to effectiveness of the Plan set forth in Article VIII of the Plan (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate the Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

3. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in Article VIII.B of the Plan, if the Effective Date of the Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

4. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**E. Exculpation, Injunction, and Related Provisions**

1. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

For purposes of the following provisions:

- “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”
- “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.
- “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO

Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

## 2. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

## 3. Exculpation

Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

4. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to Article IX.D of the Plan (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with

respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to Article IX.D of the Plan will vest and the Employee will be indefeasibly released pursuant to Article IX.D of the Plan if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

In addition to the obligations set forth in Article IX.D of the Plan, as additional consideration for the foregoing releases, the Senior Employees will waive their rights to certain deferred compensation owed to them by the Debtor. As of the date hereof, the total deferred compensation owed to the Senior Employees was approximately \$3.9 million, which will be reduced by approximately \$2.2 million to approximately \$1.7 million. That reduction is composed of a reduction of (i) approximately \$560,000 in the aggregate in order to qualify as Convenience Claims, (ii) approximately \$510,000 in the aggregate to reflect the Convenience Claims treatment of 85% (and may be lower depending on the number of Convenience Claims), and (iii) of approximately \$1.15 million in the aggregate to reflect an additional reduction of 40%.

As of the date of this Disclosure Statement, the Debtor has not identified any Causes of Action against any Released Parties. However, as set forth above, during the Chapter 11 Case, the Committee was granted sole standing to investigate and pursue the Estate Claims, which may include Causes of Action against certain of the Released Parties. As of the date of this Disclosure Statement, the Committee has not identified any Estate Claims against any Released Parties. The Debtor currently believes that there are no material Estate Claims or other Causes of Action against any Released Party.

##### 5. Preservation of Rights of Action

###### *Maintenance of Causes of Action*

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as

appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

6. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any

judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to Article XII. D of the Plan, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in Article XI of the Plan, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

7. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

8. Continuance of January 9 Order

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on

January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

#### **F. Article XII.D of the Plan**

Article XII.D of the Plan provides that, notwithstanding anything in the Plan to the contrary, nothing in the Plan will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

#### **G. Binding Nature of Plan**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in Article IX of the Plan, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a)

#### **H. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- The Debtor has complied and will comply with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Debtor's bankruptcy case, or in connection with the Plan and incident to the case, has been or will be disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the

approval of the Bankruptcy Court as reasonable if it is to be fixed after confirmation of the Plan;

- Each Class of Claims or Equity Interests that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code;
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full in Cash on the Effective Date, or as soon thereafter as is reasonably practicable;
- Confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor thereto under the Plan;
- The Debtor has paid or will pay all fees payable under section 1930 of title 28, and the Plan provides for the payment of all such fees on the Effective Date; and
- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits, if applicable.

1. Best Interests of Creditors Test

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that each holder of a claim or equity interest in each impaired class: (i) has accepted the plan; or (ii) among other things, will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the net Cash proceeds (the “Liquidation Proceeds”) that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor’s Estate were liquidated; (b) determine the distribution (the “Liquidation Distribution”) that each non-accepting Holder of a Claim or Equity Interest would receive from the Liquidation Proceeds under the priority scheme dictated in chapter 7; and (c) compare each Holder’s Liquidation Distribution to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated.

2. Liquidation Analysis

Any liquidation analysis, including the estimation of Liquidation Proceeds and Liquidation Distributions, with respect to the Debtor (the “Liquidation Analysis”) is subject to numerous assumptions and there can be no guarantee that the Liquidation Analysis will be accurate. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims and Equity Interests at the projected amounts of Allowed Claims

and Equity Interests set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims and Equity Interests that represents its best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims and Equity Interests. The estimate of the amount of Allowed Claims and Equity Interests set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any Plan Distribution to be made on account of Allowed Claims and Equity Interests under the Plan and Disclosure Statement.

The full Liquidation Analysis is attached hereto as **Exhibit C**.

Furthermore, any chapter 7 trustee appointed in a chapter 7 liquidation would have to confront all of the issues described in this Disclosure Statement, including the prepetition litigation claims. This process would be significantly time-consuming and costly, and reduce any recoveries available to the Debtor's Estate. The Debtor believes that liquidation under chapter 7 would result in (i) smaller distributions being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee, (ii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's operations, and (iii) the failure to realize greater value from all of the Debtor's assets.

Therefore, the Debtor believes that confirmation of the Plan will provide each Holder of a Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

### 3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor, unless the plan contemplates such liquidation or reorganization. For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtor has analyzed the ability of the Claimant Trust and the Reorganized Debtor to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their business. A copy of the financial projections prepared by the Debtor is attached hereto as **Exhibit C**.

The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. The Debtor believes that its available Cash and any additional proceeds from the Debtor's Assets will be sufficient to allow the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, to make all payments required to be made under the Plan. Accordingly, the Debtor believes that the Plan is feasible.

4. Valuation

In order to provide information and full disclosure to parties in interest regarding the Debtor's assets, the Debtor estimates that its value and the total value of its Assets, as of September 30, 2020, was approximately \$328.3 million.

5. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accepts the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default— (a) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan and are not insiders. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by holders of at least two-thirds in amount of the allowed interests of such class. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. Section 1126(d) of the Bankruptcy Code, except as otherwise provided in section 1126(e) of the Bankruptcy Code, defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of equity interests in that class actually voting to accept or to reject the plan.

Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims or Equity Interests in any voting class must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Class, and without considering whether the Plan "discriminates unfairly" with respect to such Class, as both standards are described herein.

6. Confirmation Without Acceptance by Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if less than all impaired classes entitled to vote on the plan have accepted it, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired Class's rejection or deemed rejection of the Plan, the Plan will be confirmed, at the Debtor's request, in a procedure commonly known as "cram down," so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Plan.

7. No Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

8. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class:

The condition that a plan be "fair and equitable" to a non-accepting Class of Secured Claims includes the requirements that: (a) the Holders of such Secured Claims retain the liens securing such Claims to the extent of the Allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the Plan; and (b) each Holder of a Secured Claim in the Class receives deferred Cash payments totaling at least the Allowed amount of such Claim with a present value, as of the Effective Date of the Plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting Class of unsecured Claims includes the requirement that either: (a) the plan provides that each Holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the allowed amount of such Claim; or (b) the Holder of any Claim or Equity Interest that is junior to the Claims of such Class will not receive or retain under the plan on account of such junior Claim or Equity Interest any property.

The condition that a plan be "fair and equitable" to a non-accepting Class of Equity Interests includes the requirements that either: (a) the plan provides that each Holder of an Equity Interest in that Class receives or retains under the plan, on account of that Equity Interest, property of a value, as of the Effective Date of the plan, equal to the greater of (i) the allowed

amount of any fixed liquidation preference to which such Holder is entitled, (ii) any fixed redemption price to which such Holder is entitled, or (iii) the value of such interest; or (b) if the Class does not receive such an amount as required under (a), no Class of Equity Interests junior to the non-accepting Class may receive a distribution under the plan.

To the extent that any class of Claims or Class of Equity Interests rejects the Plan, the Debtor reserves the right to seek (a) confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (b) modify the Plan in accordance with Article XIII.C of the Plan.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan.

#### **ARTICLE IV. RISK FACTORS**

**ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.**

##### **A. Certain Bankruptcy Law and Other Considerations**

1. Parties in Interest May Object to the Debtor's Classification of Claims and Equity Interests, or Designation as Unimpaired.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Holders of Claims or Equity Interests or the Bankruptcy Court will reach the same conclusion.

There is also a risk that the Holders of Claims or Equity Interests could object to the Debtor's designation of Claims or Equity Interests as Unimpaired, and the Bankruptcy Court could reach the same conclusion.

2. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, findings by the bankruptcy court that: (i) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a

need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to Holders of Claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. Continued Risk Following Effectiveness.

Even if the Effective Date of the Plan occurs, the Debtor, the Reorganized Debtor, and Claimant Trust will continue to face a number of risks, including certain risks that are beyond its control, such as changes in assets, asset values, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of liquidation reflecting the Plan will achieve the Debtor's stated goals.

In addition, at the outset of the Chapter 11 Case, the Bankruptcy Code provides the Debtor with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtor will have retained the exclusive right to propose the Plan upon filing its petition. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtor's ability to achieve confirmation of the Plan in order to achieve the Debtor's stated goals.

5. The Effective Date May Not Occur.

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

6. The Chapter 11 Case May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than selling the assets in an orderly and controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. Claims Estimation

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated herein.

8. The Financial Information Contained Herein is Based on the Debtor's Books and Records and, Unless Otherwise Stated, No Audit was Performed.

**The financial information contained in this Disclosure Statement has not been audited.** In preparing this Disclosure Statement, the Debtor relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement and, while the Debtor believes that such financial information fairly reflects its financial condition, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

**B. Risks Related to Recoveries under the Plan**

1. The Reorganized Debtor and/or Claimant Trust May Not Be Able to Achieve the Debtor's Projected Financial Results

The Reorganized Debtor or Claimant Trust, as applicable, may not be able to achieve their projected financial results. The Financial Projections represent the best estimate of the Debtor's future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtor or Claimant Trust, as well as the United States and world economies in general, and the investment industry in which the Debtor operates. The Debtor's Financial Projections include key assumptions on (i) target asset monetization values, (ii) timing of asset monetization, and (iii) costs to effectuate the Plan. In terms of achieving target asset monetization values, the Debtor faces issues including investment assets with cross-ownership across related entities and challenges associated with

collecting notes due from affiliates. The Debtor's Financial Projections anticipate that all investment assets will be sold by 2022, which may be at risk due to the semi-liquid or illiquid nature of the Debtor's assets, as well as general market conditions, including the sustained impact of COVID-19. Costs are based on estimates and may increase with delays or any other unforeseen factor. If the Reorganized Debtor or Claimant Trust do not achieve their projected financial results, the recovery for Claimant Trust Beneficiaries may be negatively affected and the Claimant Trust may lack sufficient liquidity after the Effective Date.

2. Claim Contingencies Could Affect Creditor Recoveries

The estimated Claims and projected creditor recoveries set forth in this Disclosure Statement are based on various assumptions the actual amount of Allowed Claims may differ from the estimates. Should one or more of the underlying assumptions ultimately prove incorrect, the actual Allowed amounts of Claims may vary materially from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

3. If Approved, the Debtor Release Could Release Claims Against Potential Defendants of Estate Causes of Action With Respect to Which the Claimant Trust Would Otherwise Have Recourse

The Claimant Trust Assets will include, among other things, Causes of Action, including Estate Claims that will be assigned to the Litigation Sub-Trust. The Committee's investigation of potential Estate Claims is still ongoing. Because the Committee has not concluded its investigation as of the date hereof, and such investigation will be transferred to the Litigation Trustee, there is no certainty of whether there are viable Estate Claims against any of the Released Parties. In the event there are viable Estate Claims against any of the Released Parties, such claims cannot be pursued for the ultimate benefit of Claimant Trust Beneficiaries if the Debtor Release is approved.

**C. Investment Risk Disclaimer**

1. Investment Risks in General.

The Reorganized Debtor is and will remain a registered investment adviser under the Investment Advisers Act of 1940, and the Reorganized Debtor will continue advising the Managed Funds. No guarantee or representation is made that the Reorganized Debtor's or the Managed Funds' investment strategy will be successful, and investment results may vary substantially over time.

2. General Economic and Market Conditions and Issuer Risk.

Any investment in securities carries certain market risks. Investments by the Reorganized Debtor, the Managed Funds, or the Claimant Trust may decline in value for any number of reasons over which none of the Managed Funds, the Reorganized Debtor, the Claimant Trust, or the Claimant Trustee may have control, including changes in the overall

market and other general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, currency exchange rates and controls and national, international political circumstances (including wars and security operations), and acts of God (including pandemics like COVID-19). The value of the Managed Funds or the assets held by the Reorganized Debtor or Claimant Trust may also decline as a result of factors pertaining to particular securities held by the Managed Funds, Reorganized Debtor, or Claimant Trust, as applicable, such as perception or changes in the issuer's management, the market for the issuer's products or services, sources of supply, technological changes within the issuer's industry, the availability of additional capital and labor, general economic conditions, political conditions, acts of God, and other similar conditions. All of these factors may affect the level and volatility of security prices and the liquidity and the value of the securities held by the Managed Fund, Reorganized Debtor, or Claimant Trust. Unexpected volatility or illiquidity could impair the Managed Funds', Reorganized Debtor's, or Claimant Trust's profitability or result in it suffering losses.

#### **D. Disclosure Statement Disclaimer**

1. The Information Contained Herein is for Disclosure Purposes Only.

The information contained in this Disclosure Statement is for purposes of disclosure in connection with the Plan and may not be relied upon for any other purposes.

2. This Disclosure Statement was Not Approved by the SEC.

Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

3. This Disclosure Statement Contains Forward-Looking Statements.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements.

4. No Legal or Tax Advice is Provided to You by This Disclosure Statement.

**This Disclosure Statement is not legal or tax advice to you.** The contents of this Disclosure Statement should not be construed as legal, business or tax advice, and are not personal to any person or entity. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than as a disclosure of certain information to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Admissions Are Made by This Disclosure Statement.

The information and statements contained in this Disclosure Statement will neither (i) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Reorganized Debtor, the Claimant Trust, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

6. No Reliance Should Be Placed on Any Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Reorganized Debtor or Claimant Trustee, as applicable, may seek to investigate, file and prosecute litigation rights and claims against any third parties and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such litigation claims or objections to Claims or Equity Interests.

7. Nothing Herein Constitutes a Waiver of Any Right to Object to Claims or Equity Interests or Recover Transfers and Assets.

The Debtor, the Reorganized Debtor, the Claimant Trustee, or any party in interest, as the case may be, reserve any and all rights to object to that Holder's Allowed Claim regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

8. The Information Used Herein was Provided by the Debtor and was Relied Upon by the Debtor's Advisors.

Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

9. The Disclosure Statement May Contain Inaccuracies.

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, the information contained in this Disclosure Statement is as of the date of the Disclosure Statement and does not address events that may occur after such date. The Debtor may update this Disclosure Statement but is not required to do so.

10. No Representations Made Outside the Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

**ARTICLE V.**

**ALTERNATIVES TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which case, a trustee would be elected or appointed to liquidate the Debtor's assets. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

**ARTICLE VI.**

**U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Implementation of the Plan will have federal, state, local or foreign tax consequences to the Debtor and Holders of Equity Interests as well as Holders of Claims. No tax opinion or ruling has been sought or will be obtained with respect to any tax consequences of the Plan, and the following discussion does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims. This discussion assumes that each Holder of Claims is for United States federal income tax purposes:

- An individual who is a citizen or resident of the United States for federal income tax purposes;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any other person that is subject to U.S. federal income taxation on a net income basis.
- an estate the income of which is subject to United States federal income tax without regard to its source; or
- a trust (1) that is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) that has a valid election in effect under applicable treasury regulations to be treated as a United States person.

This discussion also assumes that each Holder holds the Claims as capital assets under Section 1221 of the Internal Revenue Code.

The summary provides general information only and does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder of Claims in light of such Holder's own individual circumstances. In particular, the summary does not address the federal income tax consequences of the Plan to Holders of Claims that may be subject to special rules, such as non-U.S. persons, insurance companies, financial institutions, regulated investment companies, broker-dealers, persons who acquired Claims as part of a straddle, hedge, conversion transaction or other integrated transaction, or persons who acquired Claims in connection with the performance of services; persons who hold Claims through a partnership or other pass-through entity and tax-exempt organizations. The summary does not address foreign, state, local, estate or gift tax consequences of the Plan, nor does it address the federal income tax consequences to Holders of Equity Interests.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the final, temporary and proposed Treasury regulations promulgated thereunder, judicial decisions and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, judicial decision or administrative action. Moreover, due to a lack of definitive authority, substantial uncertainties exist with respect to various tax consequences of the Plan.

**THE TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS OR EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.**

**A. Consequences to the Debtor**

It is anticipated that the consummation of the Plan will not result in any federal income tax liability to the Debtor. The Debtor is a partnership for federal income tax purposes. Therefore, the income and loss of the Debtor is passed-through to the Holders of its Equity Interests, and the Debtor does not pay federal income tax.

1. Cancellation of Debt

Generally, the discharge of a debt obligation of a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income that must be included in the debtor's income. Due to the nature of the Impaired Claims, it is anticipated that

the Debtor will not recognize any material amount of COD income. If any such COD income is recognized, it will be passed-through to the Holders of its Equity Interests, and the Holders of such Equity Interest generally will be required to include such amounts in income, unless a Holder is entitled to exclude such amounts from income under Section 108 of the Internal Revenue Code, based on the Holder's individual circumstances.

## 2. Transfer of Assets

Pursuant to the Plan, the Debtor's assets (including the Claimant Trust Assets and Reorganized Debtor Assets) will be transferred directly or indirectly to the Claimant Trust. For federal income tax purposes, any such assets transferred to the Claimant Trust will be deemed to have been transferred to the Claimant Trust Beneficiaries followed by the transfer by such Holders to the Claimant Trust of such assets in exchange for the respective Holders' beneficial interests in the Claimant Trust. The Claimant Trust thereafter will be treated as a grantor trust for federal income tax purposes. See U.S. Federal Income Tax Treatment of the Claimant Trust, below.

The Debtor's transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets. As discussed above, the Debtor is a partnership for federal income tax purposes. Any gain or loss recognized as a result of the taxable disposition of such assets will be passed through to the Holders of Equity Interests in the Debtor. The Debtor will not be required to pay any tax as a result of such disposition.

### **B. U.S. Federal Income Tax Treatment of the Claimant Trust**

It is intended that the Claimant Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Claimant Trust Agreement requires all relevant parties to treat, for U.S. federal income tax purposes, the transfer of the Debtor's assets to the Claimant Trust as (i) a transfer of such assets to the Claimant Trust Beneficiaries (to the extent of the value of their respective interests in the applicable Claimant Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Claimant Trust (to the extent of the value of their respective interests in the applicable Claimant Trust Assets), with the beneficiaries being treated as the grantors and owners of the Claimant Trust.

The Plan and the Claimant Trust Agreement generally provide that the Claimant Trust Beneficiaries must value the assets of the Claimant Trust consistently with the values determined by the Claimant Trustee for all U.S. federal income tax purposes. As soon as possible after the Effective Date, the Claimant Trustee, based upon his good faith determination after consultation with his counsel and other advisors, shall inform the beneficiaries in writing as to his estimate of the value of the assets transferred to the Claimant Trust and the value of such assets allocable to each Class of beneficiaries.

Consistent with the treatment of the Claimant Trust as a grantor trust, the Claimant Trust Agreement will require each beneficiary to report on its U.S. federal income tax return its allocable share of the Claimant Trust's income, gain, loss or deduction that reflects the

beneficiary's interest in the interim and final distributions to be made by the Claimant Trust. Furthermore, certain of the assets of the Claimant Trust will be interests in the Reorganized Debtor, which will be a partnership for U.S. federal income tax purposes. The income, gain, loss or deduction of the Reorganized Debtor will also flow through the Claimant Trust to the beneficiaries of the Claimant Trust. Therefore, a beneficiary may incur a federal income tax liability with respect to its allocable share of the income of the Claimant Trust (including the income of the Reorganized Debtor) whether or not the Claimant Trust has made any distributions to such beneficiary. The character of items of income, gain, deduction, and credit to any beneficiary and the ability of such beneficiary to benefit from any deduction or losses will depend on the particular situation of such beneficiary. The interests of the beneficiaries may shift from time to time as the result of the allowance or disallowance of claims that have not been allowed at the Effective Date, which could give rise to tax consequences both to the Holders of claims that have, and have not been, allowed at the Effective Date. The Claimant Trustee will file with the IRS tax returns for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each beneficiary a separate statement setting forth such beneficiary's share of items of Trust income, gain, loss, deduction, or credit. Each beneficiary will be required to report such items on its U.S. federal income tax return. Holders are urged to consult their tax advisors regarding the appropriate federal income tax treatment of distributions from the Claimant Trust.

The discussion above assumes that the Claimant Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Claimant Trust and the beneficiaries could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Claimant Trust).

### **C. Consequences to Holders of Allowed Claims**

#### **1. Recognized Gain or Loss**

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such Holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). In general, the "amount realized" by a Holder will equal the sum of any cash and the aggregate fair market value of any property received by such Holder pursuant to the Plan (for example, such Holder's undivided beneficial interest in the assets of the Claimant Trust). A Holder that receives or is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its receipt or deemed receipt. See U.S. Federal Income Tax Treatment of the Claimant Trust, above for more information regarding the tax treatment of the Claimant Trust Interests.

Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long it has been held, whether the claim was acquired at

a market discount, and whether and to what extent the Holder had previously claimed a bad debt deduction.

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled to a deduction for U.S. federal income tax purposes. The rules governing the character, timing and amount of such a deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

## 2. Distribution in Discharge of Accrued Unpaid Interest

Pursuant to the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received (whether cash or other property) by a Holder of a claim is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as interest income if not previously included in the Holder's gross income. Conversely, a Holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult their tax advisors regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

## 3. Information Reporting and Withholding

All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding" (currently at a rate of up to 24%). Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

## **D. Treatment of the Disputed Claims Reserve**

Pursuant to the Plan, the Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity. Such taxes will be paid out of the Disputed Claims Reserve and therefore may reduce amounts paid to Holders of Allowed Claims from the Claimant Trust. If the Claimant Trustee does not make such an election to treat the Disputed Claims Reserve as a separate taxable entity, the net income, if any, earned in the Disputed Claims Reserve will be taxable to the Holders of Allowed Claims in accordance with

the principles discussed above under the heading “U.S. Federal Income Tax Treatment of the Claimant Trust”, possibly in advance of any distributions to the Holders.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PLAN.**

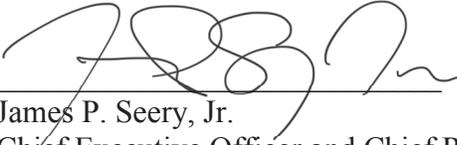
**ARTICLE VII.  
RECOMMENDATION**

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distribution to the Debtor’s creditors and interest holders. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.



James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

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003221

**EXHIBIT A**

**PLAN OF REORGANIZATION**

003222

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

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Counsel for the Debtor and Debtor-in-Possession

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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## **DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” means an “affiliate” as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

59. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

62. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

69. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

71. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

77. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

87. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. “*Petition Date*” means October 16, 2019.

91. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

104. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

105. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

107. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. “*Related Entity*” means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

132. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
 CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

*1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.**

**MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

## ARTICLE V.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor’s books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to

such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*1. Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

*2. Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

**C. Effect of Non-Occurrence of Conditions to Effectiveness**

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

**D. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**

**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose

before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

*1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

#### **G. Term of Injunctions or Stays**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

#### **H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

#### **ARTICLE X. BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

#### **ARTICLE XI. RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however,* that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however,* that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.** **MISCELLANEOUS PROVISIONS**

### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: November 24, 2020

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

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

James P. Seery, Jr.  
Chief Executive Officer and Chief  
Restructuring Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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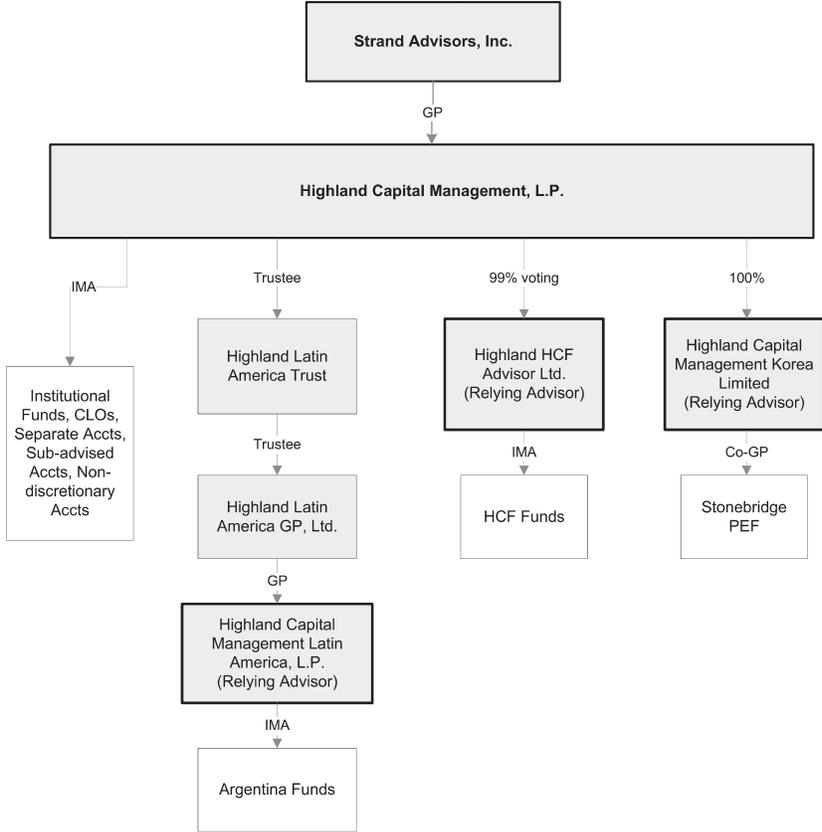
[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT B**

**ORGANIZATIONAL CHART OF THE DEBTOR**

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**EXHIBIT C**

**LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS**

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**Highland Capital Management, L.P.**  
**Disclaimer For Financial Projections**

This document includes financial projections for July 2020 through December 2022 (the "Projections") for Highland Capital Management, L.P. ("Company"). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company's anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

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**Highland Capital Management, L.P.**  
**Statement of Assumptions**

- A. Plan effective date is January 31, 2021.
- B. All investment assets are sold by December 31, 2022.
- C. All demand notes are collected in the year 2021.
- D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
- E. Fixed assets used in daily business operations are sold in February 2021.
- F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
- G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
- H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
  - I. Litigation Trustee budget is \$6,500,000.
  - J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
- K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
- L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
- M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume \$0 for UBS, IFA, HM and HV.
  - Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
- N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
- O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate \$13.15 million. Plan currently projects Class 7 payout of \$9.96 million.
- P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
  - o By September 30, 2021 - \$50,000,000
  - o By March 31, 2022 – additional \$50,000,000
  - o By June 30, 2022 – additional \$25,000,000
  - o All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

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**Highland Capital Management, L.P.**  
**Plan Analysis Vs. Liquidation Analysis**  
**(US \$000's)**

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	\$ 25,076	\$ 25,076
Estimated proceeds from monetization of assets [1][2]	190,445	149,197
Estimated expenses through final distribution[1][3]	(33,642)	(36,232)
Total estimated \$ available for distribution	<u>181,879</u>	<u>138,042</u>
Less: Claims paid in full		
Unclassified [4]	(1,078)	(1,078)
Administrative claims [5]	(10,574)	(10,574)
Class 1 - Jefferies Secured Claim	-	-
Class 2 - Frontier Secured Claim [6]	(5,463)	(5,463)
Class 3 - Other Secured Claims	(551)	(551)
Class 4 - Priority Non-Tax Claims	(16)	(16)
Class 5 - Retained Employee Claims	-	-
Class 6 - PTO Claims	-	-
Class 7 - Convenience Claims [7][8][9]	(10,255)	-
Subtotal	<u>(27,937)</u>	<u>(17,682)</u>
Estimated amount remaining for distribution to general unsecured claims	<u>153,942</u>	<u>120,359</u>
Class 8 - General Unsecured Claims [8][10]	<u>176,049</u>	<u>192,258</u>
Subtotal	<u>176,049</u>	<u>192,258</u>
% Distribution to general unsecured claims	87.44%	62.60%
Estimated amount remaining for distribution	-	-
Class 9 - Subordinated Claims	<i>no distribution</i>	<i>no distribution</i>
Class 10 - Class B/C Limited Partnership Interests	<i>no distribution</i>	<i>no distribution</i>
Class 11 - Class A Limited Partnership Interest	<i>no distribution</i>	<i>no distribution</i>

Footnotes:

[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee

Assumes Chapter 7 Trustee engages new professionals to help liquidate assets

[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable

[3] Estimated expenses through final distribution exclude non-cash expenses:

Depreciation of \$462 thousand in 2021

[4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court

[5] Represents \$4.7 million in unpaid professional fees and \$4.5 million in timing of payments to vendors

[6] Debtor will pay all unpaid interest estimated at \$253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold

[7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of \$13.15 million

[8] Class 7 includes \$1.1 million estimate for aggregate contract rejections damage and Class 8 includes \$1.4 million for contract rejection damages

[9] Assumes 3 claimants with allowed claims less than \$2.5 million opt into Class 7 along with claims of Senior Employees

[10] Class estimates \$0 allowed claim for the following creditors: IFA, HV, HM and UBS; assumes RCP claims offset against HCMLP interest in RCP fund

Notes:

All claim amounts are estimated as of November 20, 2020 and subject to change

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**Highland Capital Management, L.P.**  
**Balance Sheet**  
**(US \$000's)**

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
<b>Assets</b>											
Cash and Cash Equivalents	\$ 14,994	\$ 5,888	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803	\$ 52,322	\$ 23,641	\$ 21,344	\$ -
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396	6,054	6,723	7,406	-
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159	54,159	54,159	54,159	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
<b>TOTAL ASSETS</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>	<b>\$ 112,535</b>	<b>\$ 84,523</b>	<b>\$ 82,910</b>	<b>\$ -</b>
<b>Liabilities</b>											
Post-petition Liabilities	\$ 26,226	\$ 19,138	\$ 19,280	\$ 2,891	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-	-	-	-	-
<b>Claims</b>											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,210	-	-	-	-	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049	76,049	51,049	51,049	22,107
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049	76,049	51,049	51,049	22,107
<b>TOTAL LIABILITIES</b>	<b>\$ 152,591</b>	<b>\$ 145,481</b>	<b>\$ 141,230</b>	<b>\$ 184,150</b>	<b>\$ 176,049</b>	<b>\$ 126,049</b>	<b>\$ 126,049</b>	<b>\$ 76,049</b>	<b>\$ 51,049</b>	<b>\$ 51,049</b>	<b>\$ 22,107</b>
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309	36,486	33,473	31,860	(22,107)
<b>TOTAL LIABILITIES AND PARTNERS' CAPITAL</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>	<b>\$ 112,535</b>	<b>\$ 84,523</b>	<b>\$ 82,910</b>	<b>\$ -</b>

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Main Document Page 176 of 178**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Actual		Forecast -->		Total 2020	3 month ended Mar 2021	3 month ended Jun 2021	3 month ended Sept 2021	3 month ended Dec 2021	Total 2021
	Jan 2020 to June 2020 Total	3 month ended Sept 2020	3 month ended Dec 2020							
Revenue										
Management Fees	\$ 6,572	\$ 1,949	\$ 2,651	\$ 11,173	\$ 779	\$ -	\$ -	\$ -	\$ -	\$ 779
Shared Service Fees	7,672	3,765	3,788	15,225	1,263	-	-	-	-	1,263
Other Income	3,126	538	340	4,004	113	-	-	-	-	113
Total revenue	\$ 17,370	\$ 6,252	\$ 6,779	\$ 30,401	\$ 2,154	\$ -	\$ -	\$ -	\$ -	\$ 2,154
Operating Expenses [1]	13,328	9,171	9,079	31,579	8,428	1,646	1,807	2,655		14,536
Income/(loss) From Operations	\$ 4,042	\$ (2,918)	\$ (2,301)	\$ (1,177)	\$ (6,274)	\$ (1,646)	\$ (1,807)	\$ (2,655)	\$ (2,655)	\$ (12,381)
Professional Fees	17,522	7,707	7,741	32,971	5,450	5,058	2,048	1,605		14,160
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878	(59,016)	573	423	423		(57,598)
Operating Gain/(Loss)	\$ (11,178)	\$ (9,107)	\$ (8,985)	\$ (29,270)	\$ (70,741)	\$ (6,130)	\$ (3,432)	\$ (3,837)	\$ (3,837)	\$ (84,139)
Realized and Unrealized Gain/(Loss)										
Other Realized Gains/(Loss)	-	-	-	-	(763)	522	-	-	-	(241)
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)	(290)	19	(4,702)	(8,006)		(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)	-	-	-	-		-
Net Realized Gain/(Loss) from Equity Method Investees	-	-	(94)	(94)	-	(22,578)	-	(1,349)		(23,927)
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-		-
Total Realized and Unrealized Gain/(Loss)	\$ (139,129)	\$ (7,601)	\$ (12,262)	\$ (158,992)	\$ (1,053)	\$ (22,037)	\$ (4,702)	\$ (9,355)	\$ (9,355)	\$ (37,147)
Net Income	\$ (150,307)	\$ (16,708)	\$ (21,247)	\$ (188,262)	\$ (71,794)	\$ (28,167)	\$ (8,134)	\$ (13,192)	\$ (13,192)	\$ (121,287)

**Footnotes:**

[1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.

[2] Other income and expenses of \$61.2 million in January 2021 includes:

[a] \$77.7 million was expensed to record for the increase of allowed claims.

[b] Income of \$15.8 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

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**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Forecast --->				Total 2022	Plan
	3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022		
Revenue						
Management Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 779
Shared Service Fees	-	-	-	-	-	1,263
Other Income	-	-	-	-	-	113
Total revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,154
Operating Expenses	1,443	643	758	1,088	3,932	18,468
Income/(loss) From Operations	\$ (1,443)	\$ (643)	\$ (758)	\$ (1,088)	\$ (3,932)	\$ (16,314)
Professional Fees	2,788	2,788	1,288	1,288	8,153	22,313
Other Income/(Expenses)	408	419	434	184	1,444	(56,154)
Operating Gain/(Loss)	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (2,193)	\$ (10,641)	\$ (94,780)
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-	-	-	(51,775)	(51,775)	(52,016)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	-	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-	-
Net Realized Gain/(Loss) from Equity Method Investees	-	-	-	-	-	(23,927)
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	-	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	\$ -	\$ -	\$ -	\$ (51,775)	\$ (51,775)	\$ (88,922)
Net Income	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (53,967)	\$ (62,415)	\$ (183,702)

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**Highland Capital Management, L.P.**  
**Cash Flow Indirect**  
**(US \$000's)**

	Forecast ---->									
	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
Net (Loss) Income	\$ (16,708)	\$ (21,247)	\$ (71,794)	\$ (28,167)	\$ (8,134)	\$ (13,192)	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (53,967)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash										
Depreciation and amortization	231	231	231	231	-	-	-	-	-	-
Other realized (gain)/ loss	-	-	763	(522)	-	-	-	-	-	51,775
Investment realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355	-	-	-	-
Unrealized (gain) / loss	(9,150)	-	-	-	-	-	-	-	-	-
(Increase) Decrease in Current Assets	(470)	3,092	930	1,884	417	1,933	(658)	(669)	(684)	2,010
Increase (Decrease) in Current Liabilities	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Operating Activities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)	(4,481)	(3,681)	(2,297)	(182)
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278	-	-	-	7,780
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278	-	-	-	7,780
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,942)
Net Change in Cash	\$ (9,107)	\$ 22,454	\$ (23,408)	\$ 91,979	\$ (6,484)	\$ 16,374	\$ (54,481)	\$ (28,681)	\$ (2,297)	\$ (21,344)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344
Ending Cash	\$ 5,887	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803	\$ 52,322	\$ 23,641	\$ 21,344	\$ -

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**EXHIBIT DD**

### Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, substantive consolidation, recharacterization, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

## Annex 1

11 Estates Lane, LLC	Acis CLO Value Fund II Charitable DAF Ltd.
1110 Waters, LLC	Acis CMOA Trust
140 Albany, LLC	Advisors Equity Group LLC
1525 Dragon, LLC	Alamo Manhattan Hotel I, LLC
17720 Dickerson, LLC	(Third Party)
1905 Wylie LLC	Allenby, LLC
2006 Milam East Partners GP, LLC	Allisonville RE Holdings, LLC
2006 Milam East Partners, L.P.	AM Uptown Hotel, LLC
201 Tarrant Partners, LLC	Apex Care, L.P
2014 Corpus Weber Road LLC	Asbury Holdings, LLC ( <i>fka HCCLR</i>
2325 Stemmons HoldCo, LLC	<i>Camelback Investors (Delaware), LLC</i> )
2325 Stemmons Hotel Partners, LLC	Ascendant Advisors
2325 Stemmons TRS, Inc.	Atlas IDF GP, LLC
300 Lamar, LLC	Atlas IDF, LP
3409 Rosedale, LLC	BB Votorantim Highland Infrastructure, LLC
3801 Maplewood, LLC	BDC Toys Holdco, LLC
3801 Shenandoah, L.P.	Beacon Mountain, LLC
3820 Goar Park LLC	Bedell Trust Ireland Limited (Charitable trust
400 Seaman, LLC	account)
401 Ame, L.P.	Ben Roby (third party)
4201 Locust, L.P.	BH Equities, LLC
4312 Belclaire, LLC	BH Heron Pointe, LLC
5833 Woodland, L.P.	BH Hollister, LLC
5906 DeLoache, LLC	BH Willowdale Manager, LLC
5950 DeLoache, LLC	Big Spring Partners, LLC
7758 Ronnie, LLC	Blair Investment Partners, LLC
7759 Ronnie, LLC	Bloomdale, LLC
AA Shotguns, LLC	Brave Holdings III Inc.
Aberdeen Loan Funding, Ltd.	Brentwood CLO, Ltd.
Acis CLO 2017-7 Ltd	Brentwood Investors Corp.
Acis CLO Management GP, LLC	Brian Mitts
Acis CLO Management GP, LLC ( <i>fka Acis</i>	Bristol Bay Funding Ltd.
<i>CLO Opportunity Funds GP, LLC</i> )	Bristol Bay Funding, Ltd.
Acis CLO Management Holdings, L.P.	BVP Property, LLC
Acis CLO Management Intermediate Holdings	C-1 Arbors, Inc.
I, LLC	C-1 Cutter's Point, Inc.
Acis CLO Management Intermediate Holdings	C-1 Eaglecrest, Inc.
II, LLC	C-1 Silverbrook, Inc.
Acis CLO Management, LLC ( <i>fka Acis CLO</i>	Cabi Holdco GP, LLC
<i>Opportunity Funds SLP, LLC</i> )	Cabi Holdco I, Ltd
Acis CLO Trust	Cabi Holdco I, Ltd.

Cabi Holdco, L.P.  
California Public Employees' Retirement System  
Camelback Residential Investors, LLC  
Camelback Residential Investors, LLC  
(fka Sevilla Residential Partners, LLC)  
Camelback Residential Partners, LLC  
Capital Real Estate - Latitude, LLC  
Castle Bio Manager, LLC  
Castle Bio, LLC  
Cayco Admin Ltd.  
Cayco Insolvency Ltd.  
CG Works, Inc.  
CG Works, Inc.  
(fka Common Grace Ventures, Inc.)  
Charitable DAF Fund, L.P.  
Charitable DAF GP, LLC  
Charitable DAF HoldCo, Ltd  
Charitable DAF HoldCo, Ltd.  
Claymore Holdings, LLC  
CLO HoldCo, Ltd  
CLO Holdco, Ltd.  
Corbusier, Ltd.  
Cornerstone Healthcare Group Holding, Inc.  
Corpus Weber Road Member LLC  
CP Equity Hotel Owner, LLC  
CP Equity Land Owner, LLC  
CP Equity Owner, LLC  
CP Hotel TRS, LLC  
CP Land Owner, LLC  
CP Tower Owner, LLC  
CRE - Lat, LLC  
Credit Suisse, Cayman Islands Branch  
Crossings 2017 LLC  
Crown Global Insurance Company (third party)  
Dallas Cityplace MF SPE Owner LLC  
Dallas Lease and Finance, L.P.  
Dana Scott Breault  
James Dondero  
Reese Avry Dondero  
Jameson Drue Dondero  
Dana Sprong (Third Party)  
David c. Hopson  
De Kooning, Ltd.  
deKooning, Ltd.  
DFA/BH Autumn Ridge, LLC  
Dolomiti, LLC  
DrugCrafters, L.P.  
Dugaboy Investment Trust  
Dugaboy Management, LLC  
Dugaboy Project Management GP, LLC  
Eagle Equity Advisors, LLC  
Eames, Ltd.  
Eastland CLO, Ltd.  
Eastland Investors Corp.  
EDS Legacy Heliport, LLC  
EDS Legacy Partners Owner, LLC  
EDS Legacy Partners, LLC  
Empower Dallas Foundation, Inc.  
ENA 41, LLC  
Entegra Strat Superholdco, LLC  
Entegra-FRO Holdco, LLC  
Entegra-FRO Superholdco, LLC  
Entegra-HOCF Holdco, LLC  
Entegra-NHF Holdco, LLC  
Entegra-NHF Superholdco, LLC  
Entegra-RCP Holdco, LLC  
Estates on Maryland Holdco, LLC  
Estates on Maryland Owners SM, Inc.  
Estates on Maryland Owners, LLC  
Estates on Maryland, LLC  
Falcon E&P Four Holdings, LLC  
Falcon E&P One, LLC  
Falcon E&P Opportunities Fund, L.P.  
Falcon E&P Opportunities GP, LLC  
Falcon E&P Royalty Holdings, LLC  
Falcon E&P Six, LLC  
Falcon E&P Two, LLC  
Falcon Four Midstream, LLC  
Falcon Four Upstream, LLC  
Falcon Incentive Partners GP, LLC  
Falcon Incentive Partners, LP  
Falcon Six Midstream, LLC  
Flamingo Vegas Holdco, LLC (fka Cabi Holdco, LLC)

Four Rivers Co-Invest GP, LLC	GAF REIT, LLC
Four Rivers Co-Invest, L.P.	GAF Toys Holdco, LLC
FRBH Abbington SM, Inc.	Gardens of Denton II, L.P.
FRBH Abbington, LLC	Gardens of Denton III, L.P.
FRBH Arbors, LLC	Gleneagles CLO, Ltd.
FRBH Beechwood SM, Inc.	Goverannce RE, Ltd.
FRBH Beechwood, LLC	Governance Re, Ltd.
FRBH C1 Residential, LLC	Governance, Ltd.
FRBH Courtney Cove SM, Inc.	Grant Scott
FRBH Courtney Cove, LLC	Grant Scott, Trustee of The SLHC Trust
FRBH CP, LLC	Grayson CLO, Ltd.
FRBH Duck Creek, LLC	Grayson Investors Corp.
FRBH Eaglecrest, LLC	Greater Kansas City Community Foundation (third party)
FRBH Edgewater JV, LLC	Greenbriar CLO, Ltd.
FRBH Edgewater Owner, LLC	Greg Busseyt
FRBH Edgewater SM, Inc.	Gunwale LLC
FRBH JAX-TPA, LLC	Gunwale, LLC
FRBH Nashville Residential, LLC	Hakusan, LLC
FRBH Regatta Bay, LLC	Hammark Holdings LLC
FRBH Sabal Park SM, Inc.	Hampton Ridge Partners, LLC
FRBH Sabal Park, LLC	Harko, LLC
FRBH Silverbrook, LLC	Harry Bookey/Pam Bookey (third party)
FRBH Timberglen, LLC	Haverhill Acquisition Co., LLC
FRBH Willow Grove SM, Inc.	Haygood, LLC
FRBH Willow Grove, LLC	HB 2015 Family LP (third party)
FRBH Woodbridge SM, Inc.	HCBH 11611 Ferguson, LLC
FRBH Woodbridge, LLC	HCBH Buffalo Pointe II, LLC
Freedom C1 Residential, LLC	HCBH Buffalo Pointe III, LLC
Freedom Duck Creek, LLC	HCBH Buffalo Pointe, LLC
Freedom Edgewater, LLC	HCBH Hampton Woods SM, Inc.
Freedom JAX-TPA Residential, LLC	HCBH Hampton Woods, LLC
Freedom La Mirage, LLC	HCBH Overlook SM, Inc.
Freedom LHV LLC	HCBH Overlook, LLC
Freedom Lubbock LLC	HCBH Rent Investors, LLC
Freedom Miramar Apartments, LLC	HCMS Falcon GP, LLC
Freedom Sandstone, LLC	HCMS Falcon, L.P.
Freedom Willowdale, LLC	HCO Holdings, LLC
Fundo de Investimento em Direitos Creditorios BB Votorantim Highland Infraestrutura	HCOF Preferred Holdings, L.P.
G&E Apartment REIT The Heights at Olde Towne, LLC	HCOF Preferred Holdings, LP
G&E Apartment REIT The Myrtles at Olde Towne, LLC	HCOF Preferred Holdings, Ltd.
	HCRE 1775 James Ave, LLC
	HCRE Addison TRS, LLC

HCRE Addison, LLC (*fka HWS Addison, LLC*)  
HCRE Hotel Partner, LLC (*fka HCRE HWS Partner, LLC*)  
HCRE Las Colinas TRS, LLC  
HCRE Las Colinas, LLC (*fka HWS Las Colinas, LLC*)  
HCRE Plano TRS, LLC  
HCRE Plano, LLC (*fka HWS Plano, LLC*)  
HCRE-I Holding Corp.  
HCRE-II Holding Corp.  
HCRE-III Holding Corp.  
HCRE-IV Holding Corp.  
HCRE-IX Holding Corp.  
HCRE-V Holding Corp.  
HCRE-VI Holding Corp.  
HCRE-VII Holding Corp.  
HCRE-VIII Holding Corp.  
HCRE-XI Holding Corp.  
HCRE-XII Holding Corp.  
HCRE-XIII Holding Corp.  
HCRE-XIV Holding Corp.  
HCRE-XV Holding Corp.  
HCSLR Camelback Investors (Cayman), Ltd.  
HCSLR Camelback, LLC  
HCT Holdco 2 Ltd.  
HCT Holdco 2, Ltd.  
HE 41, LLC  
HE Capital 232 Phase I Property, LLC  
HE Capital 232 Phase I, LLC  
HE Capital Asante, LLC  
HE Capital Fox Trails, LLC  
HE Capital KR, LLC  
HE Capital, LLC  
HE CLO Holdco, LLC  
HE Mezz Fox Trails, LLC  
HE Mezz KR, LLC  
HE Peoria Place Property, LLC  
HE Peoria Place, LLC  
Heron Pointe Investors, LLC  
Hewett's Island CLO I-R, Ltd.  
HFP Asset Funding II, Ltd.  
HFP Asset Funding III, Ltd.  
HFP CDO Construction Corp.  
HFP GP, LLC  
HFRO Sub, LLC  
Hibiscus HoldCo, LLC  
Highland - First Foundation Income Fund  
Highland 401(k) Plan  
Highland 401K Plan  
Highland Argentina Regional Opportunity Fund GP, LLC  
Highland Argentina Regional Opportunity Fund, L.P.  
Highland Argentina Regional Opportunity Fund, Ltd.  
Highland Argentina Regional Opportunity Master Fund, L.P.  
Highland Brasil, LLC  
Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA*)  
Highland Capital Management (Singapore) Pte Ltd  
Highland Capital Management AG  
Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)  
Highland Capital Management Fund Advisors, L.P.  
Highland Capital Management Fund Advisors, L.P. (*fka Pyxis Capital, L.P.*)  
Highland Capital Management Korea Limited  
Highland Capital Management Latin America, L.P.  
Highland Capital Management LP Retirement Plan and Trust  
Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.  
Highland Capital Management Real Estate Holdings I, LLC  
Highland Capital Management Real Estate Holdings II, LLC  
Highland Capital Management Services, Inc.  
Highland Capital Management, L.P.

Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP  
Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP  
Highland Capital of New York, Inc.  
Highland Capital Special Allocation, LLC  
Highland CDO Holding Company  
Highland CDO Opportunity Fund GP, L.P.  
Highland CDO Opportunity Fund, L.P.  
Highland CDO Opportunity Fund, Ltd.  
Highland CDO Opportunity GP, LLC  
Highland CDO Opportunity Master Fund, L.P.  
Highland CDO Trust

Highland CLO 2018-1, Ltd.  
Highland CLO Assets Holdings Limited  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd. (*fka Acis Loan Funding, Ltd.*)

Highland CLO Gaming Holdings, LLC  
Highland CLO Holdings Ltd.  
Highland CLO Holdings, Ltd. (as of 12.19.17)  
Highland CLO Management Ltd.  
Highland CLO Trust

Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.  
Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC (*fka Highland Capital Loan GP, LLC*)

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. (*fka Highland Capital Loan Fund, L.P.*)

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. (*fka Highland Loan Fund, Ltd.*)

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. (*fka Highland Loan Master Fund, L.P.*)

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund (*fka Highland Energy and Materials Fund*)

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunitites Fund  
Highland Floating Rate Opportunities Fund  
Highland Fund Holdings, LLC  
Highland Funds I  
Highland Funds II  
Highland Funds III  
Highland GAF Chemical Holdings, LLC  
Highland General Partner, LP  
Highland Global Allocation Fund  
Highland Global Allocation Fund  
(*fka Highland Global Allocation Fund II*)  
Highland GP Holdings, LLC  
Highland HCF Advisor Ltd.  
Highland HCF Advisor, Ltd., as Trustee for  
and on behalf of Acis CLO Trust, as nominee  
for and on behalf of Highland CLO Funding,  
Ltd. (as of 3.29.18)  
Highland Healthcare Equity Income and  
Growth Fund  
Highland iBoxx Senior Loan ETF  
Highland Income Fund  
Highland Income Fund (*fka Highland  
Floating Rate Opportunities Fund*)  
Highland Kansas City Foundation, Inc.  
Highland Latin America Consulting, Ltd.  
Highland Latin America GP, Ltd.  
Highland Latin America LP, Ltd.  
Highland Latin America Trust  
Highland Legacy Limited  
Highland LF Chemical Holdings, LLC  
Highland Loan Funding V, LLC  
Highland Loan Funding V, Ltd.  
Highland Long/Short Equity Fund  
Highland Long/Short Healthcare Fund  
Highland Marcal Holding, Inc.  
Highland Merger Arbitrage Fund  
Highland Multi Strategy Credit Fund GP, L.P.  
Highland Multi Strategy Credit Fund GP, L.P.  
(*fka Highland Credit Opportunities CDO GP,  
L.P.*)  
Highland Multi Strategy Credit Fund, L.P.  
Highland Multi Strategy Credit Fund, L.P. (*fka  
Highland Credit Opportunities Fund, L.P., fka  
Highland Credit Opportunities CDO, L.P.*)  
Highland Multi Strategy Credit Fund, Ltd.  
Highland Multi Strategy Credit Fund, Ltd. (*fka  
Highland Credit Opportunities Fund, Ltd.*)  
Highland Multi Strategy Credit GP, LLC  
Highland Multi Strategy Credit GP, LLC (*fka  
Highland Credit Opportunities CDO GP, LLC*)  
Highland Multi-Strategy Fund GP, LLC  
Highland Multi-Strategy Fund GP, LP  
Highland Multi-Strategy IDF GP, LLC  
Highland Multi-Strategy Master Fund, L.P.  
Highland Multi-Strategy Master Fund, LP  
Highland Multi-Strategy Onshore Master  
SubFund II, LLC  
Highland Multi-Strategy Onshore Master  
Subfund, LLC  
Highland Opportunistic Credit Fund  
Highland Park CDO 1, Ltd.  
Highland Park CDO I, Ltd.  
Highland Premier Growth Equity Fund  
Highland Premium Energy & Materials Fund  
Highland Prometheus Feeder Fund I, L.P.  
Highland Prometheus Feeder Fund I, LP  
Highland Prometheus Feeder Fund II, L.P.  
Highland Prometheus Feeder Fund II, LP  
Highland Prometheus Master Fund, L.P.  
Highland Receivables Finance I, LLC  
Highland Restoration Capital Partners GP,  
LLC  
Highland Restoration Capital Partners Master,  
L.P.  
Highland Restoration Capital Partners  
Offshore, L.P.  
Highland Restoration Capital Partners, L.P.  
Highland Santa Barbara Foundation, Inc.  
Highland Select Equity Fund GP, L.P.  
Highland Select Equity Fund, L.P.  
Highland Select Equity GP, LLC  
Highland Select Equity Master Fund, L.P.

Highland Small-Cap Equity Fund	John L. Holt, Jr.
Highland Socially Responsible Equity Fund	John R. Sears, Jr.
Highland Socially Responsible Equity Fund ( <i>fka Highland Premier Growth Equity Fund</i> )	Karisopolis, LLC
	Keelhaul LLC
	KHM Interests, LLC (third party)
Highland Special Opportunities Holding Company	Kuilima Montalban Holdings, LLC
	Kuilima Resort Holdco, LLC
Highland SunBridge GP, LLC	KV Cameron Creek Owner, LLC
Highland Tax-Exempt Fund	Lakes at Renaissance Park Apartments Investors, L.P.
Highland TCI Holding Company, LLC	
Highland Total Return Fund	Lakeside Lane, LLC
Highland's Roads Land Holding Company, LLC	Landmark Battleground Park II, LLC
	Lane Britain
Hinduja Bank (Switzerland) Ltd	Larry K. Anders
Hirst, Ltd.	LAT Battleground Park, LLC
HMCF PB Investors, LLC	LAT Briley Parkway, LLC
HMx2 Investment Trust (Matt McGraner)	Lautner, Ltd.
Hockney, Ltd.	Leawood RE Holdings, LLC
HRT North Atlanta, LLC	Liberty Cayman Holdings, Ltd.
HRT Timber Creek, LLC	Liberty CLO Holdco, Ltd.
HRTBH North Atlanta, LLC	Liberty CLO, Ltd.
HRTBH Timber Creek, LLC	Liberty Sub, Ltd.
Huber Funding LLC	Long Short Equity Sub, LLC
Hunter Mountain Investment Trust	Longhorn Credit Funding LLC
HWS Investors Holdco, LLC	Longhorn Credit Funding LLC - A
Internal Investors	Longhorn Credit Funding LLC - B
Intertrust	Longhorn Credit Funding LLC (LHB)
James D. Dondero	Longhorn Credit Funding, LLC
Reese Avry Dondero	Lurin Real Estate Holdings V, LLC
Jameson Drue Dondero	Maple Avenue Holdings, LLC
	MaplesFS Limited
James Dondero	Marc C. Manzo
James Dondero and Mark Okada	Mark and Pam Okada Family Trust - Exempt Descendants' Trust
James Dondero	
Reese Avry Dondero	Mark and Pam Okada Family Trust - Exempt Trust #2
Jameson Drue Dondero	
	Mark and Pamela Okada Family Trust - Exempt Descendants' Trust
Japan Trustee Services Bank, Ltd.	
Jasper CLO, Ltd.	Mark and Pamela Okada Family Trust - Exempt Descendants' Trust #2
Jewelry Ventures I, LLC	
JMIJM, LLC	Mark and Pamela Okada Family Trust - Exempt Trust #2
Joanna E. Milne Irrevocable Trust dated Nov 25 1998 (third party)	
John Honis	Mark K. Okada

Mark Okada	NexPoint Capital, Inc. ( <i>fka NexPoint Capital, LLC</i> )
Mark Okada and Pam Okada	
Mark Okada and Pam Okada, as joint owners	NexPoint CR F/H DST, LLC
Mark Okada/Pamela Okada	NexPoint Credit Strategies Fund
Markham Fine Jewelers, L.P.	NexPoint Discount Strategies Fund ( <i>fka NexPoint Discount Yield Fund</i> )
Markham Fine Jewelers, LP	
Matt McGraner	NexPoint DRIP
Meritage Residential Partners, LLC	NexPoint Energy and Materials Opportunities Fund ( <i>fka NexPoint Energy Opportunities Fund</i> )
MGM Studios HoldCo, Ltd.	
Michael Rossi	
ML CLO XIX Sterling (Cayman), Ltd.	NexPoint Event-Driven Fund ( <i>fka NexPoint Merger Arbitrage Fund</i> )
N/A	
Nancy Dondero	NexPoint Flamingo DST
NCI Apache Trail LLC	NexPoint Flamingo Investment Co, LLC
NCI Assets Holding Company LLC	NexPoint Flamingo Leaseco, LLC
NCI Country Club LLC	NexPoint Flamingo Manager, LLC
NCI Fort Worth Land LLC	NexPoint Flamingo Property Manager, LLC
NCI Front Beach Road LLC	NexPoint Healthcare Opportunities Fund
NCI Minerals LLC	NexPoint Hospitality Trust
NCI Roysse City Land LLC	NexPoint Hospitality, Inc.
NCI Stewart Creek LLC	NexPoint Hospitality, LLC
NCI Storage, LLC	NexPoint Insurance Distributors, LLC
Neil Labatte	NexPoint Insurance Solutions GP, LLC
Neutra, Ltd.	NexPoint Insurance Solutions GP, LLC ( <i>fka Highland Capital Insurance Solutions GP, LLC</i> )
New Jersey Tissue Company Holdco, LLC ( <i>fka Marcal Paper Mills Holding Company, LLC</i> )	NexPoint Insurance Solutions, L.P. ( <i>fka Highland Capital Insurance Solutions, L.P.</i> )
NexAnnuity Holdings, Inc.	
NexBank Capital Trust I	
NexBank Capital, Inc.	NexPoint Latin American Opportunities Fund
NexBank Land Advisors, Inc.	NexPoint Legacy 22, LLC
NexBank Securities Inc.	NexPoint Lincoln Porte Equity, LLC
NexBank Securities, Inc.	NexPoint Lincoln Porte Manager, LLC
	NexPoint Lincoln Porte, LLC ( <i>fka NREA Lincoln Porte, LLC</i> )
NexBank SSB	
NexBank Title, Inc. (dba NexVantage Title Services)	NexPoint Multifamily Capital Trust, Inc.
NexBank, SSB	NexPoint Multifamily Capital Trust, Inc. ( <i>fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.</i> )
NexPoint Advisors GP, LLC	
NexPoint Advisors, L.P.	NexPoint Multifamily Operating Partnership, L.P.
NexPoint Capital REIT, LLC	
NexPoint Capital, Inc.	NexPoint Peoria, LLC
	NexPoint Polo Glen DST

NexPoint Polo Glen Holdings, LLC  
NexPoint Polo Glen Investment Co, LLC  
NexPoint Polo Glen Leaseco, LLC  
NexPoint Polo Glen Manager, LLC  
NexPoint RE Finance Advisor GP, LLC  
NexPoint RE Finance Advisor, L.P.  
NexPoint Real Estate Advisors GP, LLC  
NexPoint Real Estate Advisors II, L.P.  
NexPoint Real Estate Advisors II, L.P.  
NexPoint Real Estate Advisors III, L.P.  
NexPoint Real Estate Advisors IV, L.P.  
NexPoint Real Estate Advisors V, L.P.  
NexPoint Real Estate Advisors VI, L.P.  
NexPoint Real Estate Advisors VII GP, LLC  
NexPoint Real Estate Advisors VII, L.P.  
NexPoint Real Estate Advisors VIII, L.P.  
NexPoint Real Estate Advisors, L.P.  
NexPoint Real Estate Capital, LLC  
NexPoint Real Estate Capital, LLC (*fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC*)  
NexPoint Real Estate Finance OP GP, LLC  
NexPoint Real Estate Finance Operating Partnership, L.P.  
NexPoint Real Estate Finance, Inc.  
NexPoint Real Estate Opportunities, LLC  
NexPoint Real Estate Opportunities, LLC (*fka Freedom REIT LLC*)  
NexPoint Real Estate Partners, LLC  
(*fka HCRE Partners, LLC*)  
NexPoint Real Estate Partners, LLC (*fka HCRE Partners, LLC*)  
NexPoint Real Estate Strategies Fund  
NexPoint Residential Trust Inc.  
NexPoint Residential Trust Operating Partnership GP, LLC  
NexPoint Residential Trust Operating Partnership, L.P.  
NexPoint Residential Trust Operating Partnership, L.P.  
NexPoint Residential Trust, Inc.  
NexPoint Securities, Inc.  
(*fka Highland Capital Funds Distributor, Inc.*)  
(*fka Pyxis Distributors, Inc.*)  
NexPoint Strategic Income Fund  
(*fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund*)  
NexPoint Strategic Opportunities Fund  
NexPoint Strategic Opportunities Fund  
(*fka NexPoint Credit Strategies Fund*)  
NexPoint Texas Multifamily Portfolio DST  
(*fka NREA Southeast Portfolio Two, DST*)  
NexPoint WLIF I Borrower, LLC  
NexPoint WLIF I, LLC  
NexPoint WLIF II Borrower, LLC  
NexPoint WLIF II, LLC  
NexPoint WLIF III Borrower, LLC  
NexPoint WLIF III, LLC  
NexPoint WLIF, LLC (Series I)  
NexPoint WLIF, LLC (Series II)  
NexPoint WLIF, LLC (Series III)  
NexStrat LLC  
NexVest, LLC  
NexWash LLC  
NFRO REIT Sub, LLC  
NFRO TRS, LLC  
NHF CCD, Inc.  
NHT 2325 Stemmons, LLC  
NHT Beaverton TRS, LLC  
(*fka NREA Hotel TRS, Inc.*)  
NHT Beaverton, LLC  
NHT Bend TRS, LLC  
NHT Bend, LLC  
NHT Destin TRS, LLC  
NHT Destin, LLC  
NHT DFW Portfolio, LLC  
NHT Holdco, LLC  
NHT Holdings, LLC  
NHT Intermediary, LLC  
NHT Nashville TRS, LLC  
NHT Nashville, LLC  
NHT Olympia TRS, LLC  
NHT Olympia, LLC  
NHT Operating Partnership GP, LLC

NHT Operating Partnership II, LLC  
NHT Operating Partnership, LLC  
NHT Salem, LLC  
NHT SP Parent, LLC  
NHT SP TRS, LLC  
NHT SP, LLC  
NHT Tigard TRS, LLC  
NHT Tigard, LLC  
NHT TRS, Inc.  
NHT Uptown, LLC  
NHT Vancouver TRS, LLC  
NHT Vancouver, LLC  
NLA Assets LLC  
NMRT TRS, Inc.  
NREA Adair DST Manager, LLC  
NREA Adair Investment Co, LLC  
NREA Adair Joint Venture, LLC  
NREA Adair Leaseco Manager, LLC  
NREA Adair Leaseco, LLC  
NREA Adair Property Manager LLC  
NREA Adair, DST  
NREA Ashley Village Investors, LLC  
NREA Cameron Creek Investors, LLC  
NREA Cityplace Hue Investors, LLC  
NREA Crossing Investors LLC  
NREA Crossings Investors, LLC  
NREA Crossings Ridgewood Coinvestment,  
LLC (*fka NREA Crossings Ridgewood  
Investors, LLC*)  
NREA DST Holdings, LLC  
NREA El Camino Investors, LLC  
NREA Estates Inc.  
NREA Estates Investment Co, LLC  
NREA Estates Leaseco, LLC  
NREA Estates Manager, LLC  
NREA Estates Property Manager, LLC  
NREA Estates, DST  
NREA Gardens DST Manager LLC  
NREA Gardens DST Manager, LLC  
NREA Gardens Investment Co, LLC  
NREA Gardens Leaseco Manager, LLC  
NREA Gardens Leaseco, LLC  
NREA Gardens Property Manager, LLC  
NREA Gardens Springing LLC  
NREA Gardens Springing Manager, LLC  
NREA Gardens, DST  
NREA Hidden Lake Investment Co, LLC  
NREA Hue Investors, LLC  
NREA Keystone Investors, LLC  
NREA Meritage Inc.  
NREA Meritage Investment Co, LLC  
NREA Meritage Leaseco, LLC  
NREA Meritage Manager, LLC  
NREA Meritage Property Manager, LLC  
NREA Meritage, DST  
NREA Oaks Investors, LLC  
NREA Retreat Investment Co, LLC  
NREA Retreat Leaseco, LLC  
NREA Retreat Manager, LLC  
NREA Retreat Property Manager, LLC  
NREA Retreat, DST  
NREA SE MF Holdings LLC  
NREA SE MF Holdings, LLC  
NREA SE MF Investment Co, LLC  
NREA SE MF Investment Co, LLC  
NREA SE Multifamily LLC  
NREA SE Multifamily, LLC  
NREA SE One Property Manager, LLC  
NREA SE Three Property Manager, LLC  
NREA SE Two Property Manager, LLC  
NREA SE1 Andros Isles Leaseco, LLC  
NREA SE1 Andros Isles Manager, LLC  
NREA SE1 Andros Isles, DST  
(Converted from DK Gateway Andros, LLC)  
NREA SE1 Arborwalk Leaseco, LLC  
NREA SE1 Arborwalk Manager, LLC  
NREA SE1 Arborwalk, DST  
(Converted from MAR Arborwalk, LLC)  
NREA SE1 Towne Crossing Leaseco, LLC  
NREA SE1 Towne Crossing Manager, LLC  
NREA SE1 Towne Crossing, DST  
(Converted from Apartment REIT Towne  
Crossing, LP)  
NREA SE1 Walker Ranch Leaseco, LLC  
NREA SE1 Walker Ranch Manager, LLC

NREA SE1 Walker Ranch, DST  
(Converted from SOF Walker Ranch Owner,  
L.P.)

NREA SE2 Hidden Lake Leaseco, LLC  
NREA SE2 Hidden Lake Manager, LLC  
NREA SE2 Hidden Lake, DST  
NREA SE2 Hidden Lake, DST  
(Converted from SOF Hidden Lake SA Owner,  
L.P.)

NREA SE2 Vista Ridge Leaseco, LLC  
NREA SE2 Vista Ridge Manager, LLC  
NREA SE2 Vista Ridge, DST  
NREA SE2 Vista Ridge, DST  
(Converted from MAR Vista Ridge, L.P.)

NREA SE2 West Place Leaseco, LLC  
NREA SE2 West Place Manager, LLC  
NREA SE2 West Place, DST  
(Converted from Landmark at West Place,  
LLC)

NREA SE3 Arboleda Leaseco, LLC  
NREA SE3 Arboleda Manager, LLC  
NREA SE3 Arboleda, DST  
(Converted from G&E Apartment REIT  
Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC  
NREA SE3 Fairways Manager, LLC  
NREA SE3 Fairways, DST  
(Converted from MAR Fairways, LLC)

NREA SE3 Grand Oasis Leaseco, LLC  
NREA SE3 Grand Oasis Manager, LLC  
NREA SE3 Grand Oasis, DST  
(Converted from Landmark at Grand Oasis,  
LP)

NREA Southeast Portfolio One Manager, LLC  
NREA Southeast Portfolio One, DST  
NREA Southeast Portfolio One, DST  
NREA Southeast Portfolio Three Manager,  
LLC

NREA Southeast Portfolio Three, DST  
NREA Southeast Portfolio Three, DST  
NREA Southeast Portfolio Two Manager, LLC  
NREA Southeast Portfolio Two, DST  
NREA Southeast Portfolio Two, LLC

NREA SOV Investors, LLC  
NREA Uptown TRS, LLC  
NREA VB I LLC  
NREA VB II LLC  
NREA VB III LLC  
NREA VB IV LLC  
NREA VB Pledgor I LLC  
NREA VB Pledgor I, LLC  
NREA VB Pledgor II LLC  
NREA VB Pledgor II, LLC  
NREA VB Pledgor III LLC  
NREA VB Pledgor III, LLC  
NREA VB Pledgor IV LLC  
NREA VB Pledgor IV, LLC  
NREA VB Pledgor V LLC  
NREA VB Pledgor V, LLC  
NREA VB Pledgor VI LLC  
NREA VB Pledgor VI, LLC  
NREA VB Pledgor VII LLC  
NREA VB Pledgor VII, LLC  
NREA VB SM, Inc.  
NREA VB V LLC  
NREA VB VI LLC  
NREA VB VII LLC  
NREA Vista Ridge Investment Co, LLC  
NREC AR Investors, LLC  
NREC BM Investors, LLC  
NREC BP Investors, LLC  
NREC Latitude Investors, LLC  
NREC REIT Sub, Inc.  
NREC TRS, Inc.  
NREC WW Investors, LLC  
NREF OP I Holdco, LLC  
NREF OP I SubHoldco, LLC  
NREF OP I, L.P.  
NREF OP II Holdco, LLC  
NREF OP II SubHoldco, LLC  
NREF OP II, L.P.  
NREF OP IV REIT Sub TRS, LLC  
NREF OP IV REIT Sub, LLC  
NREF OP IV, L.P.  
NREO NW Hospitality Mezz, LLC  
NREO NW Hospitality, LLC

NREO Perilune, LLC  
NREO SAFStor Investors, LLC  
NREO TRS, Inc.  
NRESF REIT Sub, LLC  
NXRT Abbingdon, LLC  
NXRT Atera II, LLC  
NXRT Atera, LLC  
NXRT AZ2, LLC  
NXRT Barrington Mill, LLC  
NXRT Bayberry, LLC  
NXRT Bella Solara, LLC  
NXRT Bella Vista, LLC  
NXRT Bloom, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine LP, LLC  
NXRT Brandywine LP, LLC  
NXRT Brentwood Owner, LLC  
NXRT Brentwood, LLC  
NXRT Cedar Pointe Tenant, LLC  
NXRT Cedar Pointe, LLC  
NXRT Cityview, LLC  
NXRT Cornerstone, LLC  
NXRT Crestmont, LLC  
NXRT Crestmont, LLC  
NXRT Enclave, LLC  
NXRT Glenview, LLC  
NXRT H2 TRS, LLC  
NXRT Heritage, LLC  
NXRT Hollister TRS LLC  
NXRT Hollister, LLC  
NXRT LAS 3, LLC  
NXRT Master Tenant, LLC  
NXRT Nashville Residential, LLC  
NXRT Nashville Residential, LLC (*aka Freedom Nashville Residential, LLC*)  
NXRT North Dallas 3, LLC  
NXRT Old Farm, LLC  
NXRT Pembroke Owner, LLC  
NXRT Pembroke, LLC  
NXRT PHX 3, LLC  
NXRT Radbourne Lake, LLC  
NXRT Rockledge, LLC  
NXRT Sabal Palms, LLC  
NXRT SM, Inc.  
NXRT Steeplechase, LLC  
NXRT Stone Creek, LLC  
NXRT Summers Landing GP, LLC  
NXRT Summers Landing LP, LLC  
NXRT Torreyana, LLC  
NXRT Vanderbilt, LLC  
NXRT West Place, LLC  
NXRTBH AZ2, LLC  
NXRTBH Barrington Mill Owner, LLC  
NXRTBH Barrington Mill SM, Inc.  
NXRTBH Barrington Mill, LLC  
NXRTBH Bayberry, LLC  
NXRTBH Cityview, LLC  
NXRTBH Colonnade, LLC  
NXRTBH Cornerstone Owner, LLC  
NXRTBH Cornerstone SM, Inc.  
NXRTBH Cornerstone, LLC  
NXRTBH Dana Point SM, Inc.  
NXRTBH Dana Point, LLC  
NXRTBH Foothill SM, Inc.  
NXRTBH Foothill, LLC  
NXRTBH Heatherstone SM, Inc.  
NXRTBH Heatherstone, LLC  
NXRTBH Hollister Tenant, LLC  
NXRTBH Hollister, LLC  
NXRTBH Madera SM, Inc.  
NXRTBH Madera, LLC  
NXRTBH McMillan, LLC  
NXRTBH North Dallas 3, LLC  
NXRTBH Old Farm II, LLC  
NXRTBH Old Farm Tenant, LLC  
NXRTBH Old Farm, LLC  
NXRTBH Radbourne Lake, LLC  
NXRTBH Rockledge, LLC  
NXRTBH Sabal Palms, LLC  
NXRTBH Steeplechase, LLC  
(dba Southpoint Reserve at Stoney Creek)-VA  
NXRTBH Stone Creek, LLC  
NXRTBH Vanderbilt, LLC

NXRTBH Versailles SM, Inc.	PWM1 Holdings, LLC
NXRTBH Versailles, LLC	PWM1, LLC
Oak Holdco, LLC	RADCO - Bay Meadows, LLLP
Oaks CGC, LLC	RADCO - Bay Park, LLLP
Okada Family Revocable Trust	RADCO NREC Bay Meadows Holdings, LLC
Oldenburg, Ltd.	RADCO NREC Bay Park Holdings, LLC
Pam Capital Funding GP Co. Ltd.	Ramarim, LLC
Pam Capital Funding, L.P.	Rand Advisors Series I Insurance Fund
PamCo Cayman Ltd.	Rand Advisors Series II Insurance Fund
Park West 1700 Valley View Holdco, LLC	Rand Advisors, LLC
Park West 2021 Valley View Holdco, LLC	Rand PE Fund I, L.P.
Park West Holdco, LLC	Rand PE Fund I, L.P. - Series 1
Park West Portfolio Holdco, LLC	Rand PE Fund Management, LLC
Participants of Highland 401K Plan	Rand PE Holdco, LLC
Patrick Willoughby-McCabe	Realdania
PCMG Trading Partners XXIII, L.P.	Red River CLO, Ltd.
PCMG Trading Partners XXIII, LP	Red River Investors Corp.
PDK Toys Holdco, LLC	Riverview Partners SC, LLC
Pear Ridge Partners, LLC	Rockwall CDO II Ltd.
Penant Management GP, LLC	Rockwall CDO II, Ltd.
Penant Management LP	Rockwall CDO, Ltd.
PensionDanmark Holding A/S	Rockwall Investors Corp.
PensionDanmark	Rothko, Ltd.
Pensionsforsikringsaktieselskab	RTT Bella Solara, LLC
Peoria Place Development, LLC (30% cash contributions - profit participation only)	RTT Bloom, LLC
Perilune Aero Equity Holdings One, LLC	RTT Financial, Inc.
Perilune Aviation LLC	RTT Hollister, LLC
PetroCap Incentive Holdings III. L.P.	RTT Rockledge, LLC
PetroCap Incentive Partners II GP, LLC	RTT Torreyana, LLC
PetroCap Incentive Partners II, L.P.	SALI Fund Partners, LLC
PetroCap Incentive Partners III GP, LLC	SAS Management
PetroCap Incentive Partners III, LP	SAS Asset Recovery Ltd.
PetroCap Management Company LLC	San Diego County Employees Retirement Association
PetroCap Partners II GP, LLC	Sandstone Pasadena Apartments, LLC
PetroCap Partners II, L.P.	Sandstone Pasadena, LLC
PetroCap Partners III GP, LLC	Santa Barbara Foundation (third party)
PetroCap Partners III, L.P.	Saturn Oil & Gas LLC
Pharmacy Ventures I, LLC	SBC Master Pension Trust
Pharmacy Ventures II, LLC	Scott Matthew Siekielski
Pollack, Ltd.	SE Battleground Park, LLC
Powderhorn, LLC	SE Battleground Park, LLC

SE Glenview, LLC  
SE Governors Green Holdings, L.L.C.  
SE Governors Green Holdings, L.L.C.  
*(fka SCG Atlas Governors Green Holdings, L.L.C.)*  
SE Governors Green I, LLC  
SE Governors Green II, LLC  
SE Governors Green II, LLC  
SE Governors Green REIT, L.L.C.  
SE Governors Green REIT, L.L.C.  
*(fka SCG Atlas Governors Green REIT, L.L.C.)*  
  
SE Governors Green, LLC  
*(fka SCG Atlas Governors Green, L.L.C.)*  
SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles LP, LLC  
SE Gulfstream Isles LP, LLC  
SE Heights at Olde Towne, LLC  
SE Heights at Olde Towne, LLC  
SE Lakes at Renaissance Park GP I, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Multifamily Holdings LLC  
SE Multifamily Holdings, LLC  
SE Multifamily REIT Holdings LLC  
SE Myrtles at Olde Towne, LLC  
SE Myrtles at Olde Towne, LLC  
SE Oak Mill I Holdings, LLC  
SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*  
SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*  
SE Oak Mill I REIT, LLC  
SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*  
SE Oak Mill I, LLC  
SE Oak Mill I, LLC  
SE Oak Mill II Holdings, LLC  
SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*  
SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*  
SE Oak Mill II REIT, LLC  
SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*  
SE Oak Mill II, LLC  
SE Oak Mill II, LLC  
SE Quail Landing, LLC  
SE River Walk, LLC  
SE Riverwalk, LLC  
SE SM, Inc.  
SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*  
SE Stoney Ridge Holdings, LLC  
SE Stoney Ridge I, LLC  
SE Stoney Ridge I, LLC  
SE Stoney Ridge II, LLC  
SE Stoney Ridge II, LLC  
SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*  
SE Stoney Ridge REIT, LLC  
SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*  
SE Victoria Park, LLC  
SE Victoria Park, LLC  
Sentinel Re Holdings, Ltd.  
Sentinel Reinsurance Ltd.  
Sentinel Reinsurance Limited  
SFH1, LLC  
SFR WLIF I, LLC  
*(fka NexPoint WLIF I, LLC)*  
SFR WLIF II, LLC  
*(NexPoint WLIF II, LLC)*  
SFR WLIF III, LLC  
*(NexPoint WLIF III, LLC)*  
SFR WLIF Manager, LLC  
*(NexPoint WLIF Manager, LLC)*  
SFR WLIF, LLC  
*(NexPoint WLIF, LLC)*  
SFR WLIF, LLC Series I  
SFR WLIF, LLC Series II  
SFR WLIF, LLC Series III  
SH Castle BioSciences, LLC

Small Cap Equity Sub, LLC	The Mark and Pamela Okada Family Trust - Exempt Descendants' Trust
Socially Responsible Equity Sub, LLC	
SOF Brandywine I Owner, L.P.	The Mark and Pamela Okada Family Trust - Exempt Trust #2
SOF Brandywine II Owner, L.P.	
SOF-X GS Owner, L.P.	The Ohio State Life Insurance Company
Southfork Cayman Holdings, Ltd.	The Okada Family Foundation, Inc.
Southfork CLO, Ltd.	The Okada Insurance Rabbi Trust
Specialty Financial Products Designated Activity Company ( <i>fka Specialty Financial Products Limited</i> )	The SLHC Trust
Spiritus Life, Inc.	The Trustees of Columbia University in the City of New York
SRL Sponsor LLC	The Twentysix Investment Trust (Third Party Investor)
SRL Whisperwod LLC	Thomas A. Neville
SRL Whisperwood Member LLC	Thread 55, LLC
SRL Whisperwood Venture LLC	Tihany, Ltd.
SSB Assets LLC	Todd Travers
Starck, Ltd.	Tranquility Lake Apartments Investors, L.P.
Stemmons Hospitality, LLC	Tuscany Acquisition, LLC
Steve Shin	Uptown at Cityplace Condominium Association, Inc.
Stonebridge Capital, Inc.	US Gaming OpCo, LLC
Stonebridge-Highland Healthcare Private Equity Fund	US Gaming SPV, LLC
Strand Advisors III, Inc.	US Gaming, LLC
Strand Advisors IV, LLC	Valhalla CLO, Ltd.
Strand Advisors IX, LLC	VB GP LLC
Strand Advisors V, LLC	VB Holding, LLC
Strand Advisors XIII, LLC	VB One, LLC
Strand Advisors XVI, Inc.	VB OP Holdings LLC
Strand Advisors, Inc.	VBAnnex C GP, LLC
Stratford CLO, Ltd.	VBAnnex C Ohio, LLC
Summers Landing Apartment Investors, L.P.	VBAnnex C, LP
Term Loan B (10% cash contributions - profit participation only)	Ventoux Capital, LLC (Matt Goetz)
The Dallas Foundation	VineBrook Annex B, L.P.
The Dallas Foundation (third party)	VineBrook Annex I, L.P.
The Dondero Insurance Rabbi Trust	VineBrook Homes Merger Sub II LLC
The Dugaboy Investment Trust	VineBrook Homes Merger Sub LLC
The Dugaboy Investment Trust U/T/A Dated Nov 15, 2010	VineBrook Homes OP GP, LLC
The Get Good Non-Exempt Trust No. 1	VineBrook Homes Operating Partnership, L.P.
The Get Good Non-Exempt Trust No. 2	VineBrook Homes Trust, Inc.
The Get Good Trust	VineBrook Partners I, L.P.
	VineBrook Partners II, L.P.
	VineBrook Properties, LLC

Virginia Retirement System  
Vizcaya Investment, LLC  
Wake LV Holdings II, Ltd.  
Wake LV Holdings, Ltd.  
Walter Holdco GP, LLC  
Walter Holdco I, Ltd.  
Walter Holdco, L.P.  
Warhol, Ltd.  
Warren Chang  
Westchester CLO, Ltd.  
William L. Britain  
Wright Ltd.  
Wright, Ltd.  
Yellow Metal Merchants, Inc.

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*Counsel for the Debtor*

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

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In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	

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**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

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**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

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<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

amended, supplemented, or modified, the “Plan”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on August 11, 2021.

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court **no later than forty-five (45) days after the Effective Date** (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be Filed **no later than sixty (60) days after the Effective Date**.

**PLEASE TAKE FURTHER NOTICE** that the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan and Confirmation Order, including, without limitation: the injunction with respect to the commencement of claims and causes of action against Protected Parties set forth in Section IX.F of the Plan and Sections AA and BB of the Confirmation Order, the duration of injunction and stays set forth in Section IX.G of the Plan and Section AA of the Confirmation Order, and the continuance of the January 9 Order and July 16 Order set forth in Section IX.H of the Plan and Section CC of the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that on the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor’s formation documents, including the Limited Partnership Agreement.

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Order and the Plan

are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kcellc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kcellc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

Debtor.

Chapter 11

Case N. 19-34054 (SGJ)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS JAMES D. DONDERO,  
DUGABOY INVESTMENT TRUST, GET GOOD TRUST, AND STRAND ADVISORS,  
INC.’S MOTION TO STAY AND MOTION TO COMPEL MEDIATION**

**I. INTRODUCTION**

Defendants James D. Dondero, Strand Advisors, Inc., Dugaboy Investment Trust, and Get Good Trust (collectively, the “Dondero Defendants”) hereby file this Motion to Stay and to Compel Mediation (the “Motion”). This bankruptcy case has been pending a long time, and the professional fee burn has been tremendous. That professional spend is in part what caused Marc S. Kirschner, as Trustee of the Litigation Sub-Trust (the “Litigation Trustee”), to move to stay the adversary proceeding filed by the Litigation Trustee against the Dondero Defendants and others. During the hearing on Kirschner’s motion to stay, the Court expressed willingness to entertain a broader stay of proceedings to facilitate mediation and eventual settlement of all pending disputes between the parties. The Dondero Defendants agree that an attempted resolution is long overdue, and mediation is the best and least expensive method of accomplishing that goal. But in addition, mediation is an opportunity for the Debtor to finally provide information that is critically important to ultimate resolution, including information regarding the value of the estate and its current and contingent liabilities—information that, for whatever, reason has been shrouded in secrecy

throughout these bankruptcy proceedings.

Accordingly, and as set forth in greater detail below, the Court should employ its inherent powers to fashion a stay that will (1) pause the numerous adversary proceedings and disputes still being litigated in the context of the Highland Capital Management, L.P. bankruptcy (“HCMLP Bankruptcy”), (2) require the parties to submit their remaining disputes to mediation, and (3) mandate disclosure by the Debtor and Claimant Trustee of information that will allow the parties to meaningfully discuss global resolution. The Dondero Defendants’ Motion should be granted.

## II. FACTUAL BACKGROUND

### A. The Parties Fail To Reach A Global Resolution In Mediation, And The Court Confirms A “Monetization” Plan

As the Court is aware, the Dondero Defendants fought hard to reach agreement with the Debtor to implement a plan of reorganization that would resolve the estate, pay all creditors in full, and allow Highland Capital Management, L.P. (“HCMLP”) to emerge from bankruptcy as a going concern. *See* Order Confirming Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) (“Confirmation Order”), Bankr. Dkt. 1943, ¶ 17. To facilitate what the Court has deemed a “grand bargain” between the parties, the Court ordered the Debtor, Acis Capital Management GP, LLC and Acis Capital Management, L.P. (collectively, “Acis”), UBS Securities LLC and UBS AG London Branch (collectively, “UBS”), the Redeemer Committee, and Mr. Dondero to mediation in the summer of 2020. *Id.*, ¶ 15; *see also* Bankr. Dkt. 912.

Notably, when the parties initially raised the possibility of mediation with the Bankruptcy Court, they told the Court that *all parties* desired to mediate before two specific sitting bankruptcy judges—Judge David Jones and Judge Marvin Isgur. *See* July 8, 2020 Hr’g Tr. at 10:19-11:15, attached hereto as Ex. A. At the time, Debtor’s counsel explained that mediation should involve

“two general areas”—resolution of the claims of Acis and UBS and resolution of issues the Debtor might have with Mr. Dondero and related entities (what Debtor’s counsel deemed a “plan mediation process” aimed at “global resolution”). *Id.* The Court pushed back on the parties’ mediator selections, expressing its disbelief that Judges Jones and Isgur would have availability because of their busy schedules. *Id.* at 44:23-48:21, 51:10-53:24. As a result, the Court took control of the mediator selection process, ultimately assigning two totally different mediators to the job: Retired Bankruptcy Judge Alan Gropper from the Southern District of New York and Sylvia Mayer, a former bankruptcy practitioner turned mediator/arbitrator in Houston. *See* July 14, 2020 Hr’g Tr. at 121:8-129:5, attached hereto as Ex. B; *see also* Confirmation Order, Bankr. Dkt. 1943, ¶ 15. Nonetheless, at the time, the Court agreed that “[t]his isn’t the type of case that needs to be in bankruptcy for months and months and months,” in part because ““we have the issue of professional fees accruing, of course, like every case.” July 14, 2020 Hr’g Tr., Ex. B, at 117:2-7.

In the end, however, the mediation did not result in any “grand bargain.” That is not surprising: in advance of mediation, the Debtor and its management refused to respond to Mr. Dondero’s numerous offers to settle the estate and pay creditors in full.<sup>1</sup> When pressed by Mr. Dondero’s counsel for a response, the Debtor made clear that any global resolution involving Mr. Dondero would come at an unreasonable price. The Debtor then used mediation as an opportunity to broker two-way settlements with Acis, UBS, and the Redeemer Committee. *See* Confirmation Order, Bankr. Dkt. 1943, ¶ 15. At no point during the mediation process did any party ever make

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<sup>1</sup> The Debtor also refused to permit the participation of other key individuals in the mediation process, including former employees Scott Ellington and Isaac Leventon, whose deep knowledge regarding HCMLP’s pre-petition litigation may have proven useful in discussions regarding a global resolution.

any demand of Mr. Dondero, nor did the mediators solicit any offer from Mr. Dondero. Ultimately, mediation resulted in settlements between the Debtor and Acis, and the Debtor and the Redeemer Committee, but no other immediate resolution. *Id.*

Following mediation, it became clear that the Debtor was not interested in brokering a deal involving Mr. Dondero, even if Mr. Dondero's proposals were superior to the plan being proposed by the Debtor. In fact, on January 28, 2021, Mr. Dondero and other entities, through counsel, proposed a plan that contained significant guarantees, promised to pay creditors and holders of allowed claims more than the plan proposed by the Debtor, and preserved HCMLP's business as a going concern. *See* Declaration of Davor Rukavina ("Rukavina Dec."), ¶ 2 & Ex. 1. In response, the Debtor made clear that it would defer to the judgment of the UCC regarding which plan to adopt; counsel for the UCC explained that it would not negotiate with Mr. Dondero and that Mr. Dondero would instead need to negotiate with the UCC members themselves; and at least two of the UCC members, through counsel, and through multiple communications, refused to negotiate regarding Mr. Dondero's competing plan, saying he would have to "do more" than what he was proposing, but without ever explaining what that "more" should have been. Rukavina Dec., ¶ 3. In other words, neither the Debtor nor the UCC gave serious consideration to Mr. Dondero's proposed plan, and neither engaged in any real negotiation with Mr. Dondero.

Ultimately, over the Dondero Defendants' objection, the Bankruptcy Court confirmed the Debtor's Fifth Amended Plan of Reorganization (the "Plan") on February 22, 2021. *See* Plan Confirmation Order, Bankr. Dkt. 1943. The Plan became effective on August 11, 2021 (the "Effective Date"). *See* Dkt. 2700. Unlike Mr. Dondero's proposed plan, the confirmed Plan contemplated a liquidation rather than a reorganization of HCMLP's business. At no point prior to Plan confirmation did the Debtor disclose key financials (through Rule 2015.3 reports or

otherwise), such as total assets held by the Debtor and its subsidiaries, total claims to be paid by the estate, cash being held by the Debtor for potential indemnity claims, or valuation estimates prepared by third parties.

**B. The Litigation Trustee Commences An Adversary Proceeding, And Professionals Continue To Drain The Estate**

In the face of a Plan that did not promise creditors payment in full, the Litigation Trustee sought to bridge the gap by commencing an adversary proceeding against the Dondero Defendants and numerous other defendants two months later, on October 15, 2021. *See Kirschner v. Dondero, et al.*, Adv. Proc. No. 21-03076-sgj (the “*Kirschner Adversary*”).

Since Plan confirmation, James P. Seery, now acting as Trustee for the Claimant Trust, has continued to sell and monetize assets of the estate for the benefit of Claimant Trust Beneficiaries. The Dondero Defendants have reason to believe that process is nearing an end and that the estate has sufficient funds to pay all creditors in full with interest, leaving sufficient cash and other liquid assets to pay a return to residual equity stakeholders in Classes 10 and 11. *See* Bankr. Dkt. 3662, at ¶¶ 10-11. Yet there continue to be disputes, adversary proceedings, and appeals filed in relation to the HCMLP Bankruptcy. Those proceedings have caused a significant professional burn—to the tune of millions of dollars a month—impacting potential recovery to creditors and residual equity stakeholders.

For context, it appears that, by June 20, 2022, the estate had nearly \$550 million in cash and approximately \$120 million in other assets:

<b>Highland Capital Assets</b>		<b>Value in Millions</b>	
		<b>Low</b>	<b>High</b>
Cash as of Feb 1, 2022		\$125.00	\$125.00
Recently Liquidated	\$246.30		
Highland Select Equity	\$55.00		
Highland MultiStrat Credit Fund	\$51.44		
MGM Shares	\$26.00		
Portion of HCLOF	\$37.50		
Total of Recent Liquidations	\$416.24	\$416.24	\$416.24
<b>Current Cash Balance</b>		<b>\$541.24</b>	<b>\$541.24</b>
Remaining Assets			
Highland CLO Funding, LTD		\$37.50	\$37.50
Korea Fund		\$18.00	\$18.00
SE Multifamily		\$11.98	\$12.10
Affiliate Notes <sup>2</sup>		\$50.00	\$60.00
Other (Misc. and legal)		\$5.00	\$20.00
<b>Total (Current Cash + Remaining Assets)</b>		<b>\$663.72</b>	<b>\$688.84</b>

See Bankr. Dkt. 3662, ¶ 10 & Ex. A, ¶¶ 6-7. Yet between the Effective Date of the Plan and December 31, 2022, the Claimant Trust made non-claims holder cash disbursements of approximately \$34.9 million, and HCMLP made non-claims holder cash disbursements totaling nearly \$100 million. Compare Bankr. Dkt. 3653, p. 2 (listing total cash disbursements since Effective Date), with *id.*, p. 7 (listing disbursements to various claims holders); Bankr. Dkt. 3652, p. 2. And the Claimant Trustee has now paid distributions to allowed claims holders of approximately \$261 million, or approximately 64% of allowed claims. See Bankr. Dkt. 3653 at p. 7.

The seemingly endless and significant professional burn in the face of what the Dondero Defendants believe to be a solvent estate ultimately prompted the Dondero Defendants to seek

<sup>2</sup> According to the Valuation Complaint, some of the Affiliate Notes should have been forgiven as of the MGM sale, but litigation continues over that also. Bankr. Dkt. 3662 at ¶ 11 n.4.

critical information regarding the value of the estate from the Debtor and the Claimant Trust that has never been disclosed to the public. Among other efforts, pre-confirmation, the Dondero Defendants sought the appointment of an examine to independently value the estate. *See* Bankr. Dkt. 1752. Then, in June 2022, the Dondero Defendants filed a motion to determine the value of the estate. *See* Bankr. Dkt. 3382. And most recently, in a Motion for Leave to File Valuation Adversary Proceeding (“Valuation Motion”), the Dondero Defendants pointed out that, if their estimations are correct, then the *Kirschner* Adversary can only benefit some of the residual stakeholders currently being sued in that proceeding. Bankr. Dkt. 3662 at ¶ 18. Almost ten months have passed and an estimated average of \$4.7 million in costs have been incurred since the Dondero Defendants first sought the information.

Shortly thereafter, on March 24, 2023, the Litigation Trustee filed a motion to stay the *Kirschner* Adversary. *See Kirschner* Adversary, Dkt. 324. In response, the Dondero Defendants filed an objection and competing motion to stay, arguing that the Court should enter a broader stay than that proposed by the Litigation Trustee and compel the parties to mediate during the pendency of any stay. *See id.*, Dkt. 329; *see also* Bankr. Dkt. 3702. In particular, the Dondero Defendants sought to stay proceedings on the Debtor’s objection to Scheduled Claims 3.65 and 3.66 of Highland CLO Management, Ltd. and proceedings on the Valuation Motion in favor of a simple information exchange and mediation. Eventually, however, the Dondero Defendants withdrew their objection to the Litigation Trustee’s motion to stay, in part to stop the professional fee burn occurring in the *Kirschner* Adversary.

At the hearing on the Litigation Trustee’s motion to stay, the Court indicated a willingness to entertain a broader stay of proceedings and to compel mediation of remaining disputes. This motion is an attempt to facilitate that type of near-term resolution.

### **III. LEGAL STANDARD**

A federal court has the inherent power to control its own docket, including the power to stay proceedings before it. *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”)). When considering motions to stay, courts “must weigh competing interests and maintain an even balance.” *Landis*, 299 U.S. at 254.

It is likewise within the Court’s inherent authority under 11 U.S.C. § 105 to refer contested matters to mediation. *See In re Sargeant Farms, Inc.*, 224 B.R. 842 (Bankr. M.D. Fla.) (“[I]t is quite apparent the bankruptcy court has the authority and power to promulgate rules associated with court-ordered mediation and, where necessary, to require the parties to participate in same.”). Indeed, this Court previously invoked its inherent authority to order various parties to the HCMLP Bankruptcy to mediation. *See* Bankr. Dkt. 912.

### **IV. THE DONDERO DEFENDANTS’ MOTION SHOULD BE GRANTED**

#### **A. A Broader Stay Is Warranted**

A broad stay of proceedings relating to the HCMLP Bankruptcy is necessary to preserve private and judicial resources, and to preserve what is left of the Debtor’s estate. Although the Court already has stayed the *Kirschner* Adversary, that stay alone will not stop the professional spend on other disputes and litigation relating to the HCMLP Bankruptcy, will not encourage the parties to reach a global resolution of pending disputes, and will not facilitate the close of the HCMLP Bankruptcy.

The Court should aim higher by entering a broader stay sufficient to accomplish these goals. Specifically, and at a minimum, the Court should stay the following proceedings:

- Proceedings on the Debtor’s Objection to Scheduled Claim 3.65 and 3.66 of

Highland CLO Management, Ltd., Bankr. Dkt. 3657;

- Proceedings on the Valuation Motion, Bankr. Dkt. 3662;
- Any other outstanding adversary proceedings or contested matters currently pending before this Court that are not *sub judice*.<sup>3</sup>

Ordering a stay of these proceedings is well within the Court's inherent power to manage its own docket for the purpose of conserving both party and judicial resources. *See Landis*, 299 U.S. at 254-55. If the *Kirschner* Adversary remains stayed while the parties continue to fight about numerous other issues, that limited stay will have little effect on stopping the bleed. At the present burn rate, described above, professional fees and expenses will quickly overwhelm what little is left in the estate for payment of remaining estate liabilities.

It goes without saying that there is substantial water under the bridge. It remains the Dondero Defendants' position that there is no reason that HCMLP's highly solvent estate should have been liquidated, nor should estate professionals have facilitated sizeable claims trades to a handful of insiders for meager consideration, to the detriment of creditors and stakeholders. *See generally* Dkt. 3662 & Exs. A-1 – A-3. The Debtor and the Liquidation Trustee likely have a different view. But despite years of litigation, the HCMLP Bankruptcy and related disputes continue. The parties can continue to fight and spend resources, or the fights can be put on hold, an attempt at resolution can be made, and the acrimony can be put to rest. The Dondero

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<sup>3</sup> Notably, in the consolidated notes cases currently pending in the United States District Court for the Northern District of Texas, the Debtor recently sought leave to file a lengthy Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief ("Vexatious Litigant Motion"), which seeks to have more than 20 individuals and entities (some of whom have never appeared in the notes cases) deemed "vexatious." *See Highland Capital Mgmt., L.P. v. Highland Capital Mgmt. Fund Advisors, L.P.*, Case No. 3:21-cv-881-X, Dkt. No. 102 & Ex. A. Suffice it to say, the cost of responding to that motion alone will be substantial and require the participation of potentially dozens of law firms. For that reason, should the Court decide to grant this Motion, the Dondero Defendants also request that the Court order the Debtor to refrain from pursuing, or seek to stay, the Vexatious Litigant Motion during the pendency of any stay of these bankruptcy proceedings.

Defendants' Motion for a broader stay should be granted.

**B. The Court Should Order All Relevant Stakeholders To Mediation**

One core reason that limited stay of the *Kirschner* Adversary is insufficient is that the stay lacks *any* mechanism aimed at achieving a global resolution of the remaining issues between the parties. Even if the *Kirschner* Adversary is rendered moot by the full payment of all creditors' claims, significant disputes between Mr. Dondero and his affiliates and the Debtor and its current management would remain. Such disputes include, but are not limited to, numerous pending adversary proceedings, any claims that Mr. Dondero or his affiliates may have against third parties in relation to the HCMLP Bankruptcy or pending adversary proceedings, and the scope of any releases to be given to HCMLP and its current management, which are necessary to finally bring the bankruptcy to a close. Given the complexity of these issues, the long history of litigation and mistrust that has developed between the parties, and the Court's limited resources, mediation presents a viable and low-cost opportunity to reach a global resolution.

This Court has expressed doubt about the potential success of mediation because the prior mediation in the HCMLP Bankruptcy failed to achieve a global resolution. As set forth above, part of the problem was that stakeholders previously ordered to mediation refused to deal with Mr. Dondero, and the appointed mediators were not able to facilitate broader discussions. For that reason, the Dondero Defendants request the entry of an order compelling mediation that:

- Requires all parties currently engaged in adversary proceeding relating to the HCMLP Bankruptcy to attend mediation (the "Mediating Parties")<sup>4</sup>;
- Within 30 days, requires those parties to agree to the appointment of one or more sitting or retired United States Bankruptcy or Judges (outside of the Northern District of Texas) to be appointed as mediators;

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<sup>4</sup> Those parties would include, at a minimum, the Debtor, the Claimant Trustee, Mr. Dondero, The Dugaboy Investment Trust, Get Good Trust, Hunter Mountain Investment Trust, Stonehill Capital Management, Farallon Capital Management, Muck Holdings, and Jessup Holdings.

- Within 30 days of the appointment of any mediators, requires the parties to exchange information that the mediators deem necessary to the facilitation of the mediation, including at a minimum the information set forth in Section C, below; and
- Requires mediation to occur on or before August 31, 2023.

There is no downside to issuing an order compelling the parties to mediation. If mediation is successful, then the HCMLP Bankruptcy and related adversary proceedings will be fully and finally resolved, and the remaining estate will be preserved for the benefit of creditors and other stakeholders. If mediation is unsuccessful, the cost is minimal, and nothing is lost. At the very least, compelling the parties to mediation might facilitate meaningful conversations that expedite resolution of pending disputes and ultimately save the estate money. The Dondero Defendants' Motion to compel mediation should be granted.

**C. The Court Should Require The Disclosure Of Critical Financial Information By The Debtor And Claimant Trust Prior To Mediation**

Finally, any order compelling mediation should require the Debtor and/or Claimant Trustee to disclose the financial information required to assess the extent of the bankruptcy estate's assets and liabilities. Again, there is a valuable opportunity to reach a global resolution of the parties' outstanding disputes—including the Litigation Trustee's claims against defendants and the Dondero Defendants' potential claims against third parties or the Debtor—but the Dondero Defendants cannot consider resolution without this information. Specifically, the Dondero Defendants request that any order compelling mediation require the Debtor and/or Claimant Trustee to disclose, within thirty (30) days of entry of appointment of any mediator, the following information:

- Consolidated annual and consolidated quarterly financials for the Claimant Trust prepared in accordance with Generally Accepted Accounting Principles (GAAP), including relevant supporting schedules and footnotes for the entire period the Claimant Trust has been operating and for the period immediately preceding the

transfer of assets and liabilities to the Claimant Trust;<sup>5</sup>

- Stand-alone annual and quarterly financials prepared in accordance with sound accounting principles consistently applied for the Trust, including relevant supporting schedules and footnotes for the entire period the Claimant Trust has been operating and for the period immediately preceding the transfer of assets and liabilities to the Claimant Trust;
- Restricted and unrestricted cash balances as of the end of each calendar quarter from Q3 2021 through Q1 2023, including information regarding whether restricted cash balances are being reserved for particular expenses, indemnities, or disputed claims and, if so, identifying those specifically;
- Aggregate amounts paid and remaining amounts owed to allowed class 8 claimholders as of March 31, 2023;
- Aggregate amounts paid and remaining amounts owed to allowed class 9 claimholders as of March 31, 2023;
- Remaining pending disputed and administrative claims, including the claimholder and face amount of the claim, as of March 31, 2023;
- Cumulative amounts funded to the Indemnity Trust as of March 31, 2023;
- Total interest-bearing debt outstanding as of March 31, 2023;
- The net proceeds to the Claimant Trust and/or HCMLP of the following assets: Trussway, Targa, SSP, Cornerstone, HCLOF, MGM (directly held shares), Maple Avenue, and PetroCap Partners III; and
- List of material assets remaining, including assets available for sale, remaining notes to be collected, investment assets to be collected, membership interests to be recognized and monetized, and summary of other miscellaneous assets.

The above information will reveal whether the estate has sufficient assets to pay its creditors. If the estate does have sufficient assets to pay creditors in full, and the Dondero Defendants have reason to believe that it does, then the *Kirschner* Adversary proceeding is moot, and the parties should be able to bring the HCMLP Bankruptcy to a swift close. That is something the parties must understand in order to resolve remaining disputes. While the Dondero Defendants believe

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<sup>5</sup> If GAAP financials are unavailable, the financial statements should be prepared in accordance with sound accounting principles consistently applied.

that this information should be publicly available to ensure transparency in the HCMLP Bankruptcy proceeding, they are also amenable to receiving this information pursuant to a reasonable and appropriate protective order and pursuant to a process prescribed by an appointed mediator to address the Debtor's concerns about confidentiality, if any.

## V. CONCLUSION

It is time to bring the HCMLP Bankruptcy to a close. But the only meaningful way to do so is to enter a broad stay, order the parties to mediation, and require disclosure of information that is necessary to facilitate global resolution. The Court's stay of the *Kirschner* Adversary is a step, but it is not sufficient. The Court should exercise its inherent powers to issue an order (1) broadly staying disputes and adversary proceedings relating to the HCMLP Bankruptcy, (2) compelling current litigants to mediate, and (3) requiring the disclosure of financial information that will enable meaningful negotiations between the parties. The Dondero Defendants respectfully request that the Court grant this Motion.

Dated: April 20, 2023

DLA PIPER LLP (US)

/s/ Jason M. Hopkins

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Trust, and Get Good Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 20, 2023, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/ Amy L. Ruhland*  
\_\_\_\_\_  
Amy L. Ruhland (Rudd)

# EXHIBIT A

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

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

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

WEBEX/TELEPHONIC APPEARANCES:

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

1     burdened this estate for many years.

2             Since the last hearing, Your Honor, I've had discussions  
3 with both Committee counsel, Mr. Clemente, and counsel for  
4 each of the Committee members regarding a mediation process  
5 that I think, subject to Your Honor's concurrence, has broad  
6 support among the major parties, just proving to Your Honor  
7 that the parties can come together and agree on something in  
8 this case.

9             There is consensus that the Court should order a mediation  
10 that would encompass essentially two general areas. First,  
11 the mediation would seek to resolve the claims of Acis and  
12 UBS, to the extent the parties cannot reach agreement on their  
13 own prior to the commencement of the mediation.

14             However, resolving claims against the estate is really  
15 only one part of the equation. A true global resolution would  
16 also (audio gap) the Debtor's estate may have against Jim  
17 Dondero and related entities, claims that I'm sure Your Honor  
18 recalls the Committee bargained for the ability to prosecute  
19 in connection with the global settlement approved by Your  
20 Honor in January.

21             I've spoken with Mr. Lynn, Mr. Dondero's counsel. I know  
22 he's participating in the hearing. And he has indicated that  
23 Mr. Dondero is willing to participate in a plan mediation  
24 process to see if a global resolution can be reached.

25             The Debtor and the Committee have also discussed the names

1 of potential mediators, and subject, of course, to Your  
2 Honor's approval, the Debtor and the Committee have reached  
3 out to Judge Jones' clerk for the Southern District of Texas  
4 and he has told us that he has the time and the willingness to  
5 mediate.

6 We also believe that, if available, since there is a lot  
7 in terms of mediation in this case, that it may be helpful to  
8 have two mediators. And if Judge Isgur -- we haven't reached  
9 out to him -- is also available, we believe that both of those  
10 judges possess the qualities that this case would need to  
11 resolve -- to give the best chance of resolving the claims and  
12 the plan process in an efficient and a timely manner.

13 We would contemplate that the parties would submit fees to  
14 the mediator by July 31st, and the mediation would occur  
15 sometime in the second half of August.

16 Notwithstanding the mediation process, however, Your  
17 Honor, the Debtor is moving forward towards expeditiously  
18 filing a plan, which will not need to wait for mediation to  
19 conclude. And in that regard, Your Honor, the Debtor and the  
20 Committee have worked cooperatively over the last several  
21 weeks to draft a plan that would allow the Debtor to emerge  
22 from Chapter 11 as quickly as possible -- you know, 120 days  
23 or so after it would be filed.

24 The Debtor and the Committee and its members recognize  
25 that the administrative fees attending to the continued

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

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

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

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

7 THE COURT: Fake news really is a thing.

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

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

13 MR. POMERANTZ: We -- we --

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

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

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

1 busiest judges in the country right now. I'm wondering when  
2 were they contacted. Was it really recently, or a week or two  
3 ago? Because they've probably gotten ten new mega-cases in  
4 the past two weeks.

5 MR. POMERANTZ: So, Your Honor, the last -- the last  
6 two weeks, again, probably since June 15th, we had been  
7 discussing the structure of a mediation. We, the Debtor,  
8 proposed perhaps a combination of Judge Isgur and Jones. We  
9 initially had that conversation with Mr. Clemente, and then we  
10 socialized it with the rest of the Committee members. As of  
11 last Thursday, I believe it was, we had consensus that Judge  
12 Jones, and if available, also Judge Isgur, would make sense.

13 I sent an email to Judge Jones' clerk, indicating that we  
14 had a hearing today, that it would be helpful if we got a  
15 response, and this morning, two hours before the hearing,  
16 Judge Jones' clerk responded and told Mr. Clemente and I that  
17 he is available and ready and suggested that we have a  
18 conference with -- again, I'm not sure if it'll be him or his  
19 clerk, to talk about availability. Of course, we didn't want  
20 to go ahead and have that discussion until, you know, we got  
21 Your Honor's input on it.

22 THE COURT: Okay. I mean, a couple of things come to  
23 mind. One is I am just flabbergasted that they would have any  
24 availability. I know they're -- I'm aware of Judge Jones  
25 doing hearings on weekends.

1 But second, I'm also concerned what is their idea of  
2 availability. Because in order for a mediator to meaningfully  
3 help you on this, I mean, it's going to take not just hours  
4 but days of time, unless you want the mediator to just have a  
5 30,000-foot view. And I mean, I just cannot imagine, --

6 MR. POMERANTZ: So, --

7 THE COURT: -- once again, that they would have days  
8 and days to come up to speed with, you know, 11 years of  
9 litigation or however long it was, not that long, with UBS,  
10 you know the years with Acis, you know, the various alleged  
11 claims and causes of action, and, you know, the Byzantine  
12 structure here. I mean, you know, not that they have to be,  
13 you know, as educated as a judge presiding over litigated  
14 matters, but I just cannot imagine they could meaningfully  
15 spend time on this.

16 So what are you all envisioning? Because I know what I'm  
17 envisioning, and maybe we're not seeing it the same way. I  
18 mean, what are you thinking? That you'll go in and spend a  
19 day with, you know, maybe just each of you doing a 25-page  
20 white paper, and you'll either settle it by the end of the day  
21 or not, or what?

22 MR. POMERANTZ: So, let me start by saying that when  
23 everyone raised the issue of Judge Jones and Isgur, everyone  
24 had the same potential concern that Your Honor has mentioned.  
25 You know, my firm and me personally, I'm involved in a couple

1 of cases before Judge Jones now, significant cases. So there  
2 was a concern.

3 I think people also generally thought that if they  
4 accepted and they knew what they were getting into, they would  
5 want to do a good job and they'd have the time.

6 We have not had the ability to have an extensive  
7 discussion. That discussion could either occur with Mr.  
8 Clemente and myself speaking to the clerk or the judge, or if  
9 Your Honor -- nothing stops Your Honor from picking up the  
10 phone, speaking to Judge Jones and asking him as well.

11 But I expect it to be a very intensive mediation process.  
12 I do understand that Judge Jones only does mediations in  
13 person, so this would require people getting to Houston,  
14 which, in my experience, while I have participated in  
15 mediations virtually on the phone, it's a lot more effective  
16 to be in person. We would anticipate detailed mediation  
17 briefs. We would envision each of the parties speaking to  
18 Judge Jones to give him their perspective. But it would be --  
19 it would be a significant assignment.

20 Again, whether we would conclude at the end of August, I  
21 don't know, but I would contemplate a good two, three days of  
22 in-person mediation at the end of August, and then probably,  
23 if necessary, to set up for something else, which, again,  
24 there are several different things. And I mentioned in my  
25 opening remarks why I think people like Judge Jones -- and

1 this is also why we thought about Judge Isgur as well -- it's  
2 not often you have two mediators, but two mediators,  
3 especially judges who work together and who are pretty adept  
4 at mediation, I mean, you know, having a bankruptcy judge be a  
5 mediator is fine, but Judge Jones and Isgur, they have done a  
6 lot of that, and I understand have continued to do that,  
7 notwithstanding themselves getting busy.

8 So I can't answer Your Honor's question of whether they  
9 know what they are getting themselves into. I would hope that  
10 by, again, a combination, or Mr. Clemente and I speaking to  
11 them or Your Honor speaking to them, they would understand.  
12 And if they are willing to do it -- obviously, Highland is a  
13 high-profile case; I know judges, sitting judges, often like  
14 to help out their brethren who are sitting on the bench. So  
15 if they are ready and able to do it, we'd think we'll have  
16 lucked out, and we think they would be great to aid the  
17 process.

18 If for some reason they don't really appreciate or if  
19 Judge Jones doesn't appreciate what it is, then we can go back  
20 to square one, and, you know, I'm sure find other people as  
21 well. But we'd like to sort of give it a shot.

22 THE COURT: Okay.

23 MR. BJORK: Your Honor?

24 THE COURT: Yes?

25 MR. BJORK: May I be heard? This is Jeff Bjork with

1 California, not New York. New York, you know, has quarantined  
2 --

3 MR. POMERANTZ: Yes.

4 THE COURT: -- people traveling from Texas. Well,  
5 and remind me: August 25th. That was just sort of an  
6 internal target date you all had created?

7 MR. POMERANTZ: Yeah. It was around, you know,  
8 again, the end of August, you know, that we'd, you know, do  
9 around that time.

10 THE COURT: Uh-huh. All right. You know, I'm --  
11 I've been talking to lawyers in different cases, where the  
12 topic of mediation is being discussed, about more and more  
13 mediators, and this is private mediators, are becoming very  
14 adept with Zoom mediation. And what I thought was noteworthy  
15 -- I hadn't thought through this, you know. I thought, well,  
16 you can do mediation like this. You know, if you can do court  
17 by video, why can't you do mediation by video, what's the big  
18 deal? But there are private mediators who apparently have  
19 become every adept very fast at having these separate caucus  
20 rooms, okay? So when you have mediation involving, you know,  
21 12 different constituencies, you know, the mediator will close  
22 out all the other conference rooms and go to these three  
23 people, and then close that out and go to these eight people  
24 in this other room. And it just really hadn't occurred to me  
25 that, oh, if you're not live and in person, how do you that,

1 you know, the going back and forth from room to room? And  
2 they've got some tricks worked out where some of them are  
3 doing that. And I just don't know that any sitting judges are  
4 going to have that all worked out.

5 I have a couple of names in mind. And I have not talked  
6 to either of these folks, but I had thought of these people.  
7 You know, they're going to cost you money. They're not going  
8 to be free mediators like Judge Jones and Judge Isgur. But  
9 two people. One, I had thought of retired Judge Jim Peck. I  
10 don't know if he has availability, or, you know, a conflict or  
11 anything like that, but he's someone I happened to have gone  
12 to baby judge school with back in 2006, and, you know, have  
13 somewhat of a friendship with him. And I thought of him  
14 because not only does he have a personality that I think might  
15 fit this situation, but, as you know if you ever had a case  
16 with him, I mean, he's just so very smart. You know, he dealt  
17 -- handled the *Lehman* case. You know, he's not going to be --  
18 he'll be a very quick study, is what I'm thinking, as far as  
19 whatever factual background he would need to assemble to get  
20 up to speed.

21 And, again, I just worry -- and I'm going to get on the  
22 phone and talk to Judge Jones and Judge Isgur -- but I'm just  
23 really worried if they will devote the amount of time for this  
24 to have a meaningful shot at settling.

25 Another name I thought of is a lawyer in Houston who was

1 at Weil Gotshal many years, Sylvia Mayer. I don't know if any  
2 of you know her, but she pretty much does mediation and  
3 arbitration full-time now, and she is one of the people I am  
4 aware has mastered this Zoom separate conference rooms. So,  
5 once again, you know, a very quick study, I think, my  
6 impression from past dealings with her.

7 There may be many other names we could add to that list,  
8 but you might want to all kind of talk offline about those as  
9 well.

10 But here's what I want to do.

11 (Audio interruption.)

12 THE COURT: Was someone wanting to speak up?

13 Okay. I am going to think on this more between now and  
14 the 14th. And, again, I'm going to be reaching out to Isgur  
15 and Jones, and might reach out to Jim Peck and Sylvia Mayer as  
16 well, just to have a lot of options out there. And then we'll  
17 talk on the 14th about what my research has revealed in  
18 talking to these folks.

19 So, everyone, just let's continue to think on this  
20 mediation thing. But, again, I want this to be meaningful.  
21 I'm very worried that, you know, if all you get is one day,  
22 even a long day, with these folks, that it's just not at all  
23 realistic that there would be a chance at settling. So I've  
24 really got to think on this.

25 As far as the motions before the Court, I'm going to grant

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

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

7 MS. PATEL: Thank you, Your Honor.

8 THE COURT: Thank you. We stand adjourned.

9 THE CLERK: All rise.

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

11 --oOo--

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CERTIFICATE

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

22

**/s/ Kathy Rehling**

**07/09/2020**

23

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\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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# EXHIBIT B

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

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In Re: ) **Case No. 19-34054-sgj11**  
)  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) July 14, 2020  
) 1:30 p.m. Docket  
Debtor. )  
) APPLICATIONS TO EMPLOY JAMES  
) P. SEERY AND DEVELOPMENT  
) SPECIALISTS, INC. (774, 775)  
)

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

WEBEX/TELEPHONIC APPEARANCES:

For the Debtors: Jeffrey N. Pomerantz  
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Melissa S. Hayward  
HAYWARD & ASSOCIATES, PLLC  
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(972) 755-7104

1 face-to-face mediation right now.

2 But on the topic of mediation, you know, I've heard some  
3 things that, you know, we all know, but I've heard some things  
4 from Mr. Seery that are important to stress today. This isn't  
5 the type of case that needs to be in bankruptcy for months and  
6 months and months and months. Okay? We have the issue of the  
7 professional fees accruing, of course, like every case. But  
8 we have a company where -- it's a strange fit for bankruptcy,  
9 right, this kind of company. And it's so dependent on people  
10 to provide value. And people can bolt. You know, people can  
11 get weary of the bankruptcy and want to be somewhere else  
12 where that taint is not there in the marketplace.

13 The issue of the UCC protocols was brought up by Mr.  
14 Seery, and I know that is something that is going to be  
15 cumbersome, you know, for this company to be in bankruptcy  
16 long-term.

17 So, I want to go to Mr. Seery, and it may be unusual for  
18 me to reach out to you and ask this, but I want to hear from  
19 you: Do you think mediation is a waste-of-time pipe dream,  
20 for lack of a better term? I really want mediation to happen,  
21 because I don't know how we quickly get a confirmed plan if we  
22 have, well, the voting issue, for one, right? We have to, at  
23 a minimum, figure out what is UBS's voting claim. What's its  
24 claim for voting purposes? What is Acis's claim for voting  
25 purposes? A looming, huge issue in my mind. So I feel like

1 the field, but somebody who's got the opportunity and time to  
2 do it. And then, if it's unsuccessful, then, as Mr. Pomerantz  
3 and Ms. Patel alluded to, then perhaps we may need some  
4 judicial help to move those goal lines a little bit.

5 But I do think that mediation -- and I apologize for the  
6 length of my answer -- could be a very helpful way to do it,  
7 provided we get there quickly.

8 THE COURT: All right. I guess my other question I  
9 wanted your view on is structure. You know, when someone --  
10 Mr. Pomerantz, I think -- told me that he or others had  
11 reached out to our judges in Houston, Judge Jones and Judge  
12 Isgur, my initial reaction -- and, frankly, my continued  
13 thought on that -- is they just don't have meaningful time,  
14 because I don't think one day of cajoling is going to be  
15 enough to get -- you know, you're a billion dollars apart on  
16 UBS, right? The Debtor, I guess, thinks zero is the amount of  
17 their claim, and UBS thinks it's a billion, and it's been  
18 litigated for 11 years. And then I personally know, you know,  
19 how Acis feels about its positions.

20 So, anyway, what I'm getting at is structure. I in some  
21 ways think what we need here is sort of a master statesman-  
22 type person who would spend meaningful time, not just a day or  
23 two, but days or even weeks trying to reach a grand  
24 compromise.

25 On the other hand, in my experience -- I've never done

1 that in a case as judge. But as a lawyer, I felt like that  
2 kind of person can hijack a case, and we don't need that here.  
3 We have wonderful professionals, a wonderful Board, a  
4 wonderful CEO. We don't need that kind of help, I worry.

5 So, I guess where I'm evolving, you know, we've got the  
6 two-sitting-judge option that would be free mediators that  
7 could give you a day or two. Maybe. And then we have kind of  
8 the master statesman who might be in there for weeks, trying  
9 to help you reach a grand compromise.

10 Another option, I think, is one or two mediators who just  
11 zero in, you know, on the UBS claim versus -- and the Acis  
12 claim. And I have a couple of private mediators in mind that  
13 have very good video capabilities to have a sophisticated  
14 video mediation.

15 So, all of this rambling to say, Do you think we need to  
16 just zero in on Acis and UBS and maybe have one or two people  
17 to do formal video mediation with those two parties, or do we  
18 need sort of more of a grand pooh-bah, grand compromise-type  
19 person?

20 MR. SEERY: My view, Your Honor, is that we should  
21 focus on the claims, but they're not just going to be two-  
22 party, because we do have other active constituents. I think  
23 Redeemer, with their party in interest status, is going to  
24 want to be part of it.

25 I think if we can focus on those, we have the

1 professionals to help drive the grander bargain that I've  
2 alluded to in some of those discussions we've been having. So  
3 they haven't progressed as far as I would like, but they have  
4 progressed. We do need the bottom line number for where  
5 claims are going to come out. But also that will help frame a  
6 little bit as to what parties expect in terms of distributions  
7 on their claims.

8 And I think the reason that we had some impetus behind a  
9 sitting judge -- frankly, I didn't know that sitting judges  
10 couldn't be paid. I think that's -- there should be a  
11 standard rate, because we shouldn't take people's time for  
12 free in these cases, and I know judges work extremely hard and  
13 if they're going to put in extra time, then they should maybe  
14 be compensated, but that's a whole different issue.

15 I don't think we should get too hung up on the cost. We  
16 are -- the costs of this case are extremely high, and we are,  
17 with best intents, sometimes getting ourselves wrapped up in  
18 things that should be, I think, more swiftly and economically  
19 dealt with and dispatched.

20 So, if we can get a good mediator, and I think the reason  
21 folks think about a judge is -- a sitting judge, it's not just  
22 the vast experience that folks -- judges like yourself have,  
23 Your Honor, and in particular with these issues, but also the  
24 requirement that all the participants, notwithstanding the  
25 professionals and -- that you see here, the requirement that

1 all the participants know that they're dealing with a sitting  
2 judge, there's a certain decorum that's required. But that, I  
3 think we get anyway. But there's also a -- there's less  
4 willingness to go to the furthest reaches of your argument  
5 when you have someone who's on the bench who sees those types  
6 of positions taken frequently and can dispatch with them more  
7 readily.

8 So, I think there are a number of individuals that I've  
9 dealt with in the past who would have the ability, the  
10 gravitas, for lack of a better term, to be able to help push  
11 the parties in the right direction. And I think it's a matter  
12 of finding somebody, as you said, with both the capabilities,  
13 which we'll find, but also the capacity in terms of the time  
14 to do it. And then, in the video age, maybe some facility in  
15 being able to make that happen both rapidly and effectively on  
16 screen.

17 THE COURT: Okay.

18 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.  
19 And I'd just make a couple of comments.

20 THE COURT: Okay.

21 MR. POMERANTZ: You know, as Mr. Seery said, we were  
22 predisposed towards a sitting judge. And while we did share  
23 the same concerns about the timing of Judge Jones and Isgur,  
24 we understand you've probably been in communication with them,  
25 and if that's not going to work, we appreciate it. We want

1 this mediation to be effective and we want someone to spend  
2 the time with it. And if you didn't feel that they, you know,  
3 could commit to that, we totally appreciate that.

4 We thought long and hard about the people that you  
5 identified at the last hearing, former Judge Peck and Sylvia  
6 Mayer. We've done our diligence. The Debtor would be willing  
7 to mediate before Sylvia Mayer. We think that, based upon our  
8 diligence, the people we've spoken to, that she, if she  
9 otherwise had the time and the abil... the time to devote to  
10 it, that being a former big-firm lawyer in permanent practice  
11 now as a mediator, that the Debtor would find her acceptable.

12 THE COURT: All right. Does anyone else wish to  
13 comment? Because I have a very positive view of Sylvia Mayer,  
14 and certainly her video capabilities, I think, are far and  
15 away better than a few other people I've chatted with.

16 MS. PATEL: Your Honor?

17 MR. CLEMENTS: Your Honor? Oh, I'm sorry.

18 MS. PATEL: Go ahead.

19 MR. CLEMENTE: Your Honor, --

20 THE COURT: Not that I would ever, you know, put that  
21 ahead of, you know, overall abilities, but it just is an added  
22 plus, a huge plus right now during COVID.

23 Go ahead.

24 MR. CLEMENTE: Your Honor, Matt Clemente on behalf of  
25 the Committee. Just a couple observations, building a little

1 bit on what Mr. Seery said.

2 We had consensus among the Committee around Judge Isgur  
3 and Judge Jones. I think the view, the consensus view -- and,  
4 again, I use the word consensus and not unanimity because I  
5 want Your Honor to understand that -- is that having a sitting  
6 judge, ideally, given the personalities as you've expressed  
7 and I think as Mr. Seery has expressed, provides the best  
8 possibility for a successful mediation. It may not be that  
9 overlord that spends three weeks, but, you know, it is a  
10 strong personality that -- not that any of the names that have  
11 been raised aren't tremendously to be respected, but that  
12 would be respected by all of the parties simply by the fact  
13 that they're a sitting judge.

14 With that said, Your Honor, and, again, the speed. Again,  
15 I don't have unanimity from the Committee, but there is  
16 consensus to see if Sitting Judge Green from the Southern  
17 District of New York would have the time and the capability to  
18 spend. And I know Your Honor has concerns about the time. I  
19 think Judge Isgur and Judge Jones occupy a special place in  
20 terms of how busy they are, but at least among the Committee  
21 members, there's been discussion that that may be a suitable  
22 approach in terms of identifying a mediator and accomplishing  
23 the objectives of having a very strong mediation, mediator, on  
24 a timely basis, that has the best possibility of success.

25 That being said, Your Honor, based on what Mr. Pomerantz

1 said, if Mr. Green is not acceptable or if Your Honor doesn't  
2 wish for us to go in that direction, I do have consensus among  
3 the Committee members to move forward with Ms. Mayer as  
4 mediator.

5 So, a little -- maybe a little convoluted in my comments  
6 there, Your Honor, but the main thrust is I think there is  
7 consensus among the Committee to consider a sitting judge, and  
8 Judge Green would be someone who would be satisfactory. And  
9 if he's not acceptable, or I should say acceptable but not  
10 able to do it, Ms. Mayer would be acceptable to the Committee.

11 THE COURT: All right. Well, let me put this out  
12 there. I talked on a no-names basis with Ms. Mayer last  
13 Friday. And it was actually more in the nature of making  
14 inquiries about how an organization she's connected with, the  
15 AAA -- you've heard of the American Arbitration Association;  
16 they, of course, do mediation -- what their experience and  
17 capabilities were with many, many parties and video mediation.  
18 And as you might guess, they have a lot of experience already  
19 -- you know, a number well in excess of a hundred; I can't  
20 remember -- of doing video mediations with many parties and  
21 having the different constituencies in this caucus room and  
22 that caucus room. And, very importantly, having lots of IT  
23 staff to give instructions, to give help, to, you know, tackle  
24 technology problems.

25 But in that discussion, I learned that there is a panel

1 that AAA has put together of 12 mediators that have bankruptcy  
2 expertise. And, of course, Sylvia Mayer is one of those  
3 people. But Retired Bankruptcy Judge Gropper -- is it Groper  
4 or Gropper from the Southern District of New York? I always  
5 forget which way he pronounces his name. Anyway, he is on  
6 that. He is on that panel of 12.

7 Mr. Seery, you're grinning like you want to say something  
8 about this.

9 MR. SEERY: No. Only on the Gropper/Groper, because  
10 there's a professional that I know that is similarly named,  
11 and I believe -- and I believe Judge Groper -- I may have it  
12 wrong, but I think it's -- it's Judge Groper and Dan Gropper.  
13 But that's the best I --

14 MR. NEIER: It's Dan Groper and Judge Gropper. I  
15 actually had a mediation with the two of them when they argued  
16 about the pronunciation of their name.

17 THE COURT: Okay. Well, Gropper. So we -- it's  
18 Gropper. Okay.

19 A VOICE: Yes.

20 THE COURT: My point was, without -- I've not talked  
21 to him at all. And by the way, I haven't personally reached  
22 out to Jim Peck, but we'll stop that discussion about him.  
23 But after getting off the call with Sylvia Mayer and a couple  
24 of other people at the AAA Friday, I put together in my brain,  
25 maybe we could have a Sylvia Mayer/Allan Gropper tag team, two

1 mediators. Okay? I don't know how that would affect the  
2 cost, but that might be the way to go in such a complex case.  
3 You know, maybe they could divvy up among themselves. One  
4 would be the primary mediator on Acis, one would be the  
5 primary mediator on UBS, but they would both work together.

6 If you all want to think on that, digest that a little,  
7 and we, you know, decide definitely next week on the 21st, we  
8 could do that. Or we could just all say, yeah, that's a good  
9 game plan, and I can get on the phone after this. Or it  
10 actually may be tomorrow, because I have a terrible hearing  
11 that I've got to prepare for at 9:30 in the morning tomorrow.  
12 It may be tomorrow.

13 But do people want to let that soak in a little bit, or  
14 shall -- I mean, --

15 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

16 THE COURT: -- frankly, I can order it either way. I  
17 can order it. But I just really want to be conciliatory to  
18 the parties who are owed the money and have to pay the money,  
19 if you want to think on it some.

20 MR. POMERANTZ: Your Honor, it's Jeff Pomerantz.  
21 Having my newly-minted CEO on the phone, Mr. Seery, I would  
22 ask him, and if he says that it would be okay, then it would  
23 be okay with me.

24 MR. SEERY: Be fine with me.

25 THE COURT: Okay.

1 yesterday counsel for Mr. Dondero filed a joinder in the  
2 Debtors' objection to Acis's claim. So, again, just thinking  
3 about this in the context of mediation, I think, with that  
4 joinder, they will be a necessary party. So, going back to  
5 Mr. Seery's point, this is not just --

6 THE COURT: Oh, absolutely. Mr. Dondero is --

7 MS. PATEL: -- a two-party --

8 THE COURT: -- going to be a required party in  
9 mediation. Absolutely. So, --

10 MS. PATEL: Thank you, Your Honor.

11 THE COURT: All right. Well, if there's nothing  
12 further, we'll see you on the 21st. And, again, my courtroom  
13 deputy may be reaching out before then if we've got things  
14 nailed down on mediation.

15 (Proceedings concluded at 4:54 p.m.)

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21 CERTIFICATE

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

23

24 **/s/ Kathy Rehling**

**07/16/2020**

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\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

UNITED STATES BANKRUPTCY COURT

Northern DISTRICT OF Texas

Case number 19-34054 sgj11

In re: Highland Capital Management, LP

§  
§  
§  
§

Case No. 19-34054

Debtor(s)

Jointly Administered

**Post-confirmation Report**

Chapter 11

Quarter Ending Date: 03/31/2023

Petition Date: 10/16/2019

Plan Confirmed Date: 02/22/2021

Plan Effective Date: 08/11/2021

This Post-confirmation Report relates to:  Reorganized Debtor

Other Authorized Party or Entity:

Name of Authorized Party or Entity

/s/ Zachery Z. Annable

Signature of Responsible Party

04/21/2023

Date

Zachery Z. Annable, Hayward PLLC

Printed Name of Responsible Party

10501 N. Central Expressway, Suite 106

Dallas TX 75231

Address

STATEMENT: This Periodic Report is associated with an open bankruptcy case; therefore, Paperwork Reduction Act exemption 5 C.F.R. § 1320.4(a)(2) applies.

**Part 1: Summary of Post-confirmation Transfers**

	Current Quarter	Total Since Effective Date
a. Total cash disbursements	\$15,817,995	\$115,423,961
b. Non-cash securities transferred	\$0	\$0
c. Other non-cash property transferred	\$573,888	\$5,194,652
d. Total transferred (a+b+c)	\$16,391,883	\$120,618,613

**Part 2: Preconfirmation Professional Fees and Expenses**

a.			Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative
	Professional fees & expenses (bankruptcy) incurred by or on behalf of the debtor <i>Aggregate Total</i>			\$0	\$33,005,136	\$0
<i>Itemized Breakdown by Firm</i>						
	Firm Name	Role				
i	Pachulski Stang Ziehl & Jones	Lead Counsel	\$0	\$24,312,860	\$0	\$24,312,860
ii	Development Specialists, Inc.	Financial Professional	\$0	\$5,765,448	\$0	\$5,765,448
iii	Kurtzman Carson Consultants	Other	\$0	\$2,054,716	\$0	\$2,054,716
iv	Hayward & Associates PLLC	Local Counsel	\$0	\$872,112	\$0	\$872,112
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			Approved Current Quarter	Approved Cumulative	Paid Current Quarter	Paid Cumulative	
b.	Professional fees & expenses (nonbankruptcy) incurred by or on behalf of the debtor		\$0	\$7,604,472	\$0	\$7,604,472	
	<i>Aggregate Total</i>						
	<i>Itemized Breakdown by Firm</i>						
		Firm Name	Role				
	i	Hunton Andrews Kurth LLP	Other	\$0	\$1,149,807	\$0	\$1,149,807
	ii	Foley Gardere, Foley & Lardne	Other	\$0	\$629,088	\$0	\$629,088
	iii	Deloitte	Financial Professional	\$0	\$553,413	\$0	\$553,413
	iv	Mercer (US) Inc.	Other	\$0	\$204,767	\$0	\$204,767
v	Teneo Capital, LLC	Financial Professional	\$0	\$1,364,823	\$0	\$1,364,823	
vi	Wilmer Cutler Pickering Hale	Other	\$0	\$2,650,937	\$0	\$2,650,937	

vii	Carey Olsen	Other	\$0	\$280,264	\$0	\$280,264
viii	ASW Law	Other	\$0	\$4,976	\$0	\$4,976
ix	Houlihan Lokey Financial Adv	Other	\$0	\$766,397	\$0	\$766,397
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c.	All professional fees and expenses (debtor & committees)	\$0	\$60,171,929	\$0	\$60,171,929

**Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

	Total Anticipated Payments Under Plan	Paid Current Quarter	Paid Cumulative	Allowed Claims	% Paid of Allowed Claims
a. Administrative claims	\$0	\$0	\$15,750	\$15,750	100%
b. Secured claims	\$5,843,261	\$0	\$5,274,477	\$5,274,477	100%
c. Priority claims	\$16,498	\$0	\$1,213,832	\$1,213,832	100%
d. General unsecured claims	\$205,144,544	\$15,044,364	\$270,205,592	\$397,485,568	68%
e. Equity interests	\$0	\$0	\$0		

**Part 4: Questionnaire**

- a. Is this a final report? Yes  No
- If yes, give date Final Decree was entered: \_\_\_\_\_
- If no, give date when the application for Final Decree is anticipated: \_\_\_\_\_
- b. Are you current with quarterly U.S. Trustee fees as set forth under 28 U.S.C. § 1930? Yes  No

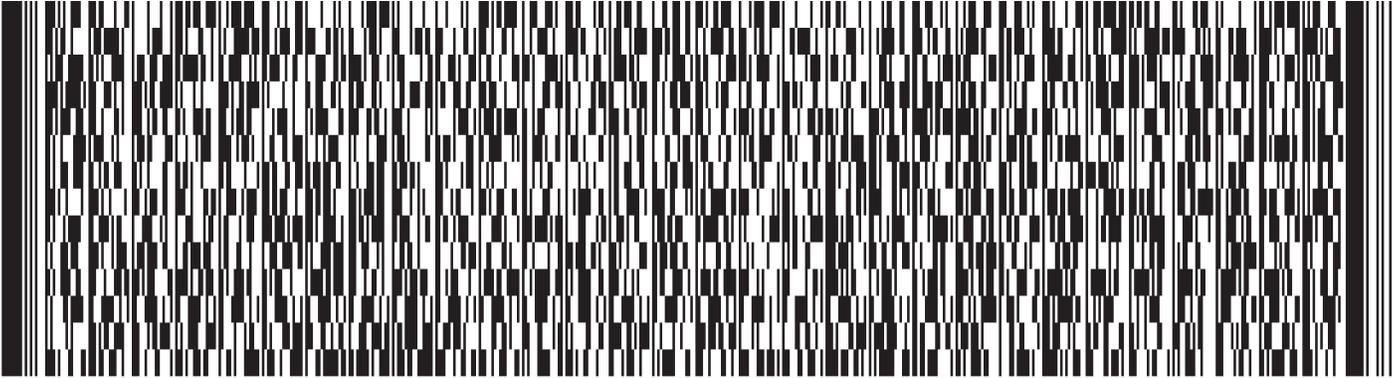
**Privacy Act Statement**

28 U.S.C. § 589b authorizes the collection of this information and provision of this information is mandatory. The United States Trustee will use this information to calculate statutory fee assessments under 28 U.S.C. § 1930(a)(6) and to otherwise evaluate whether a reorganized chapter 11 debtor is performing as anticipated under a confirmed plan. Disclosure of this information may be to a bankruptcy trustee when the information is needed to perform the trustee's duties, or to the appropriate federal, state, local, regulatory, tribal, or foreign law enforcement agency when the information indicates a violation or potential violation of law. Other disclosures may be made for routine purposes. For a discussion of the types of routine disclosures that may be made, you may consult the Executive Office for United States Trustee's systems of records notice, UST-001, "Bankruptcy Case Files and Associated Records." See 71 Fed. Reg. 59,818 et seq. (Oct. 11, 2006). A copy of the notice may be obtained at the following link: [http://www.justice.gov/ust/eo/rules\\_regulations/index.htm](http://www.justice.gov/ust/eo/rules_regulations/index.htm). Failure to provide this information could result in the dismissal or conversion of your bankruptcy case, or other action by the United States Trustee. 11 U.S.C. § 1112(b)(4)(F).

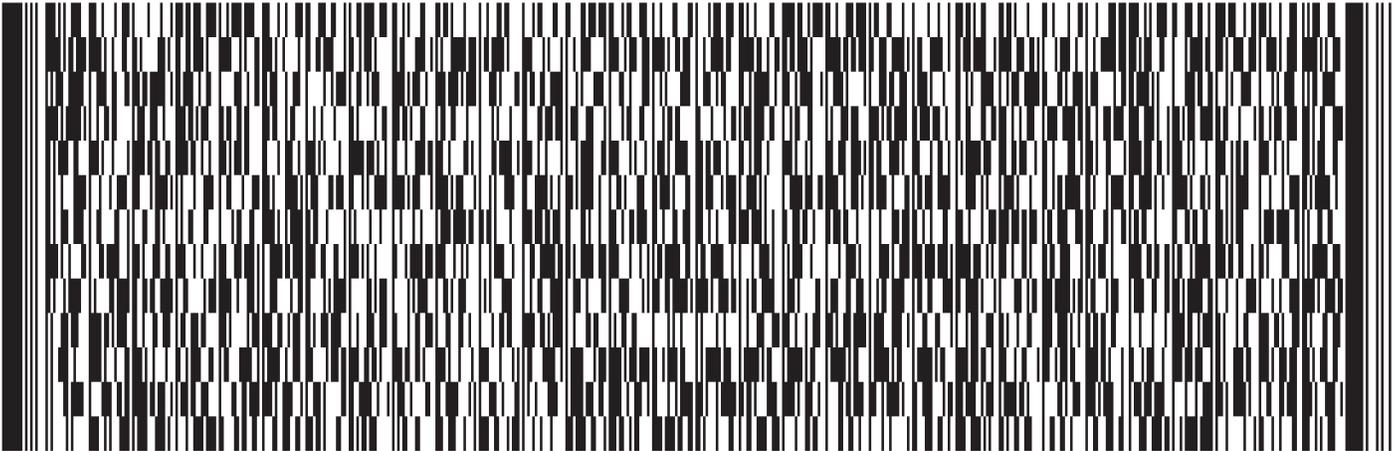
**I declare under penalty of perjury that the foregoing Post-confirmation Report and its attachments, if any, are true and correct and that I have been authorized to sign this report.**

/s/ James Seery  
Signature of Responsible Party  
CEO  
Title

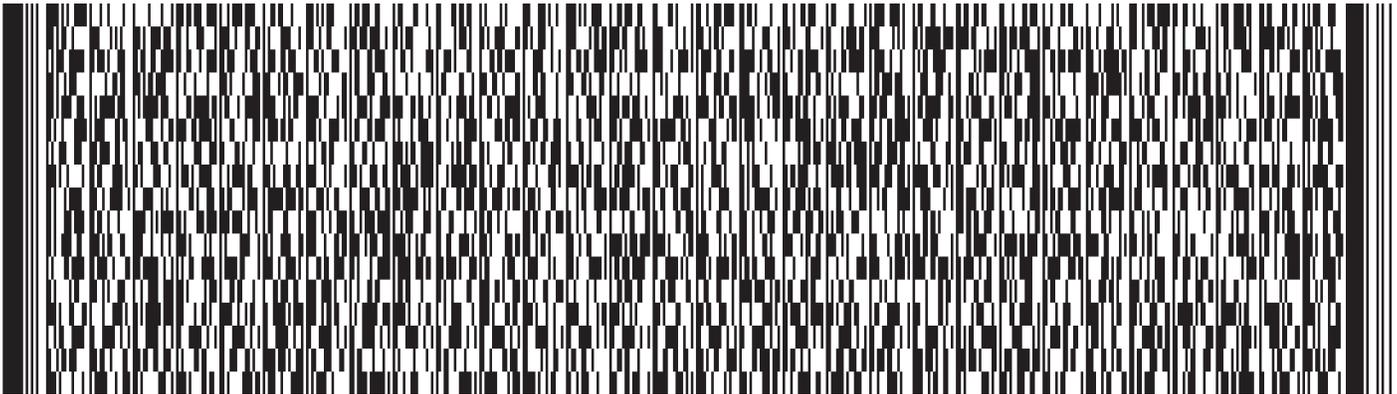
James Seery  
Printed Name of Responsible Party  
04/21/2023  
Date



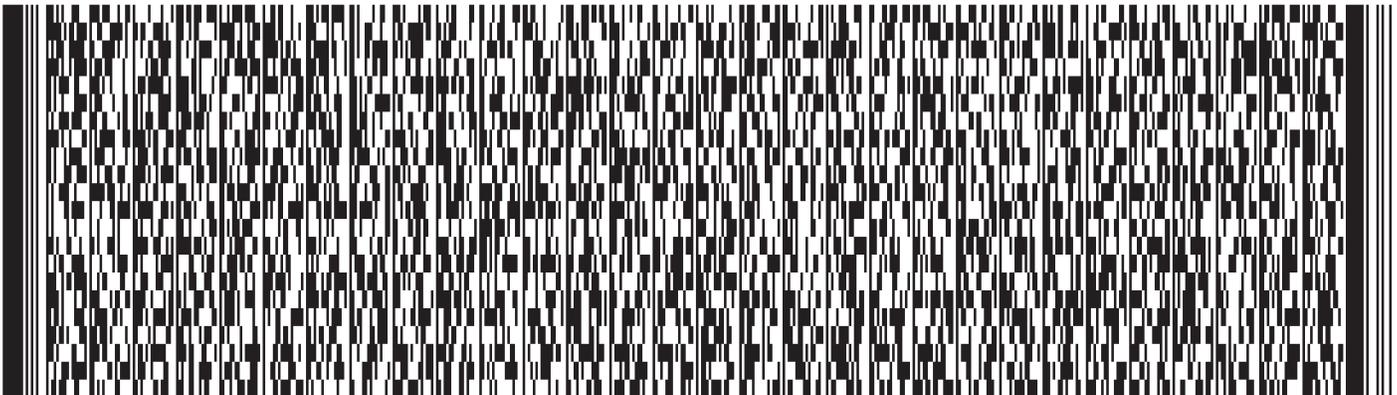
Page 1



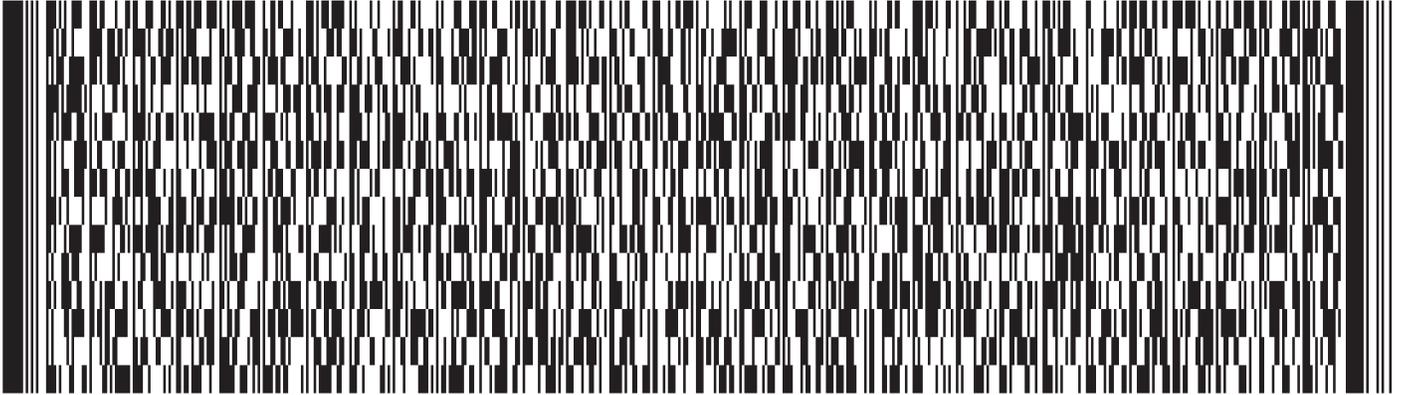
Other Page 1



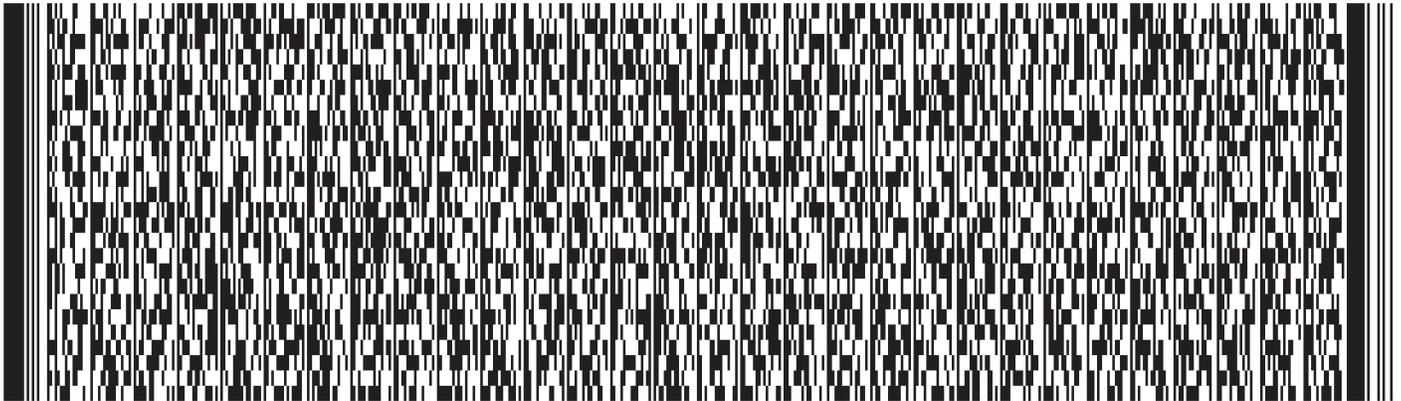
Page 2 Minus Tables



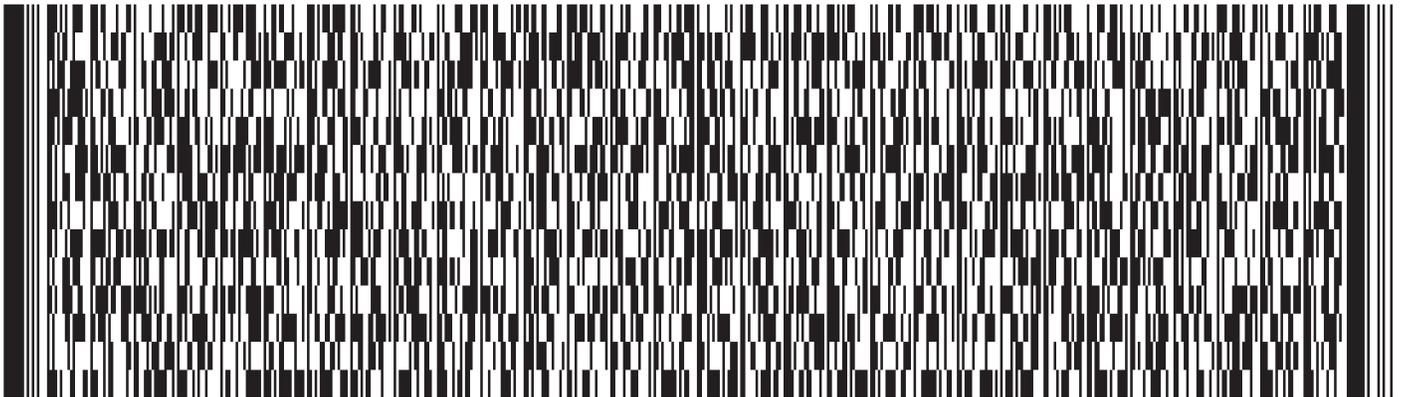
Bankruptcy Table 1-50



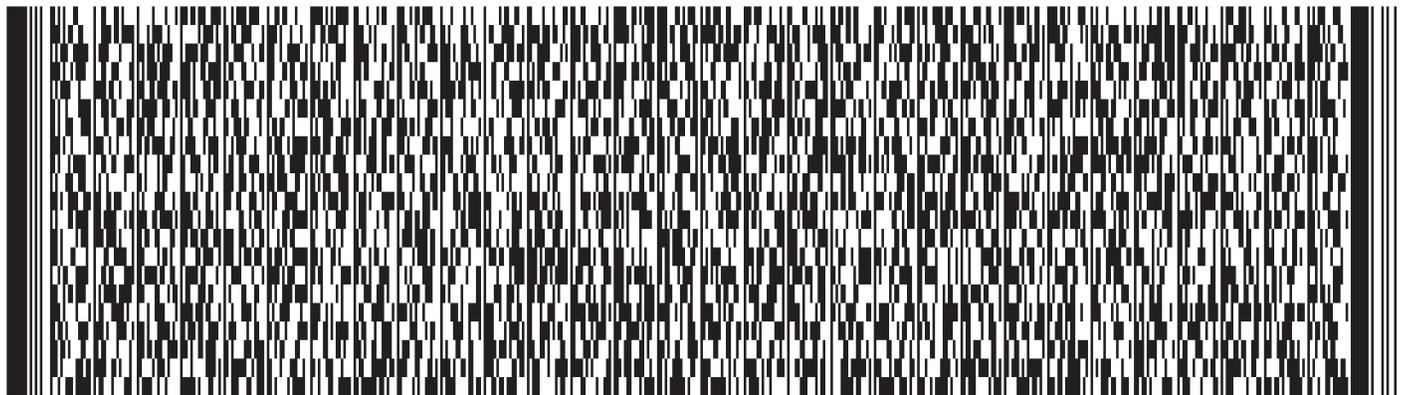
Bankruptcy Table 51-100



Non-Bankruptcy Table 1-50



Non-Bankruptcy Table 51-100



Part 3, Part 4, Last Page

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	
	)	

**GLOBAL NOTES TO POST CONFIRMATION REPORT**

The Reorganized Debtor has filed the attached post-confirmation report (the “PCR”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”), on behalf of debtor Highland Capital Management, L.P., Case No. 19-34054 (SGJ) (the “Bankruptcy Case”). The Reorganized Debtor prepared the PCR with the assistance of the Reorganized Debtor’s employees, advisors, and professionals. The PCR was prepared solely for the purpose of complying with the post-confirmation quarterly reporting requirements established by the United States Trustee Program (*see* <https://www.justice.gov/ust/chapter-11-operating-reports>). The PCR should not be relied upon by any persons for any information in connection with current or future financial conditions or events relating to the Reorganized Debtor or its estate.

The financial information contained in the PCR is preliminary, unaudited, limited in scope, and is not prepared in accordance with accounting principles generally accepted in the United States of America nor in accordance with other applicable non-bankruptcy law. In preparing the PCR, the Reorganized Debtor relied on financial data from the books and records available to it at the time of such preparation, as well as certain filings on the docket in the Bankruptcy Case. Although the Reorganized Debtor made commercially reasonable efforts to ensure the accuracy and completeness of the PCR, inadvertent errors or omissions may exist. The Reorganized Debtor reserves the right to amend and supplement the PCR as may be necessary or appropriate.

**Part 2: Preconfirmation Professional Fees and Expenses**

In Section A of the PCR, the Reorganized Debtor listed the bankruptcy related professionals employed in connection with the Bankruptcy Case.

In Section B of the PCR, the Reorganized Debtor listed non-bankruptcy professionals, those that would have been retained absent the Bankruptcy Case, and the ordinary course professionals (“OCP”). Hunton Andrews Kurth LLP (“Hunton”) and Wilmer Cutler Pickering Hale and Dorr

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

LLP (“Wilmer Hale”) were originally ordinary course professionals but were later employed professionals. The amounts listed for Hunton and Wilmer Hale include the OCP payments and employed professional payments.

In Section C of the PCR, the Reorganized Debtor totals all payments included in Sections A and B, along with payments made to professional employed by the official committee of unsecured creditors (the “Committee”).

The approved current quarter, approved cumulative, and paid cumulative will have the same amount listed due to approval and payment of final fee applications.

### **Part 3: Recoveries of the Holders of Claims and Interests under Confirmed Plan**

The payments made to holders of General Unsecured Claims were disbursed from the Claimant Trust, but for presentation purposes, have been included in Part 3 of the post-confirmation report for the Reorganized Debtor.

The presentation contained in this PCR does not reflect the material and necessary reserves that will be taken in accordance with Reorganized Debtor’s governing documents and the Plan.

The Debtor reserves all right to object to any claim in accordance with the terms of the Plan.

**Addendum to Global Notes for March 31, 2023 Quarterly Operating Report  
 Summary of Highland Claimant Trust (“Claimant Trust”) & Highland Capital Management, L.P.  
 (“HCMLP”), Effectuation of Plan as of March 31, 2023**

**Item 1: Quarter-ending cash, Disputed Claims Reserve, and Indemnity Trust summary (in \$ millions)**

<b>Quarter End Date</b>	<b>Quarter End Cash and Equivalents balances [1][2]</b>	<b>Cumulative Funding – Disputed Claims Reserve</b>	<b>Cumulative Funding – Indemnity Trust [2]</b>
3/31/2021	\$27.9	n/a	n/a
6/30/2021	\$17.9	n/a	n/a
9/30/2021	\$33.6	n/a	\$2.5
12/31/2021	\$19.8	n/a	\$2.5
3/31/2022	\$21.1	n/a	\$2.5
6/30/2022	\$85.2	n/a	\$2.5
9/30/2022	\$31.8	\$11.0	\$20.0
12/31/2022	\$36.6	\$11.0	\$20.0
3/31/2023	\$25.0	\$11.6	\$32.0

[1] Bank cash for Claimant Trust, HCMLP (debtor up to August 11, 2021; re-organized from August 11, 2021), Highland Litigation Trust Sub-Trust (“Litigation Trust”), HCMLP GP LLC and including cash at brokerage account(s), cash equivalents as well as cash or equivalent reserves for earned operating obligations, if applicable. All amounts herein EXCLUDE the Highland Indemnity Trust (“Indemnity Trust”) and the cash held within the Disputed Claims Reserve, which are described separately, as well as any other segregated agency or shareholder representative account(s) for which cash is held solely for the benefit of others.

[2] Based upon the baseless filed motion seeking to litigate against indemnified parties and threats from vexatious parties, the Claimant Trustee expects to fund significant additional amounts into the Indemnity Trust.

**Item 2: Class 8 / Class 9 Summary (in \$ millions)**

Note that payments described within Part 3 of the quarterly operating report include payments to classes 6, 7, 8, and 9, whereas payments below only include payments to classes 8 and 9, as applicable.

<b>Class 8 / 9 Summary (in \$ millions)</b>			
	<b>Cash Payments through March 31, 2023</b>	<b>Disputed Claims Reserve</b>	<b>Remaining [3]</b>
Class 8	\$263.4	\$11.6	\$28.7
Class 9	\$0.0	\$0.0	\$98.8
Classes 8 + 9	\$263.4	\$11.6	\$127.4

[3] Face amount of allowed class 8/9 claims PLUS face amount of pending class 8/9 claims LESS cumulative payments to classes 8/9 LESS cumulative reserves for classes 8/9. Amounts EXCLUDE accrued interest on claim balances as well as amounts of pending admin priority claims, and unliquidated pending class 8/9 claims. Any future distributions to classes 8 and 9 are subject to satisfaction of Claimant Trust senior obligations.

**Item 3: Remaining disputed/expunged or pending claims (in \$ millions)**

Amounts reserved within the Disputed Claims Reserve are in no way indicative of the value or validity of the claim, but rather are simply established based on the face amount of the claim and the proportionate calculation of amounts already distributed to actual allowed claimholders.

Party	Claim number(s)	Face amount	Reserved in Disputed Claims Reserve	Unreserved
Highland CLO Management, Ltd.	Scheduled/Disputed	\$10.1	(\$9.2)	\$1.0
Patrick Daugherty [4]	205	\$2.7	(\$2.4)	\$0.3
CLO Holdco, Ltd. [5]	254	Unliquidated	\$0.0	See note
HCRE Partners, LLC [6]	146	Unliquidated	\$0.0	See note
Hunter Covitz [7]	186	Unliquidated	\$0.0	See note
Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP [8]	239	\$6.7	\$0.0	\$6.7
<b>Total</b>		<b>\$19.5</b>	<b>(\$11.6)</b>	<b>\$7.9</b>

[4] Proof of claim has been partially settled, with the exception of the Reserved Claim as described in the settlement agreement with Mr. Daugherty [Docket No. 3298]. Claimant may assert additional amounts may be owed.

[5] CLO Holdco, Ltd., initially filed proof of claim 133 and subsequently amended that claim to \$0.00 in open court and then by filing proof of claim 198. HCMLP relied on that agreement and amendment. Subsequently, CLO Holdco, Ltd., sought to amend claim 198 to an estimated amount of \$3.8 million by filing proof of claim 254. The Litigation Trust objected to the attempted amended claim, and CLO Holdco, Ltd.’s claim was adjudicated at \$0.00. CLO HoldCo, Ltd., has appealed.

[6] HCRE Partners, LLC filed a motion to withdraw proof of claim 146. HCMLP contested that the withdrawal of the claim. The matter is sub judice.

[7] Proof of claim 186 was expunged, but alleged transferee of expunged claim has appealed; appeal pending.

[8] Proof of claim 239, which is an administrative priority claim, was expunged and judgment was granted against alleged creditor, but alleged creditor has appealed.

**Item 4: Interest-bearing debt outstanding as of March 31, 2023 (in \$ millions)**

No interest-bearing debt outstanding. Exit Facility retired in 2022. [9]

[9] Encompasses Claimant Trust, HCMLP (re-organized), Litigation Trust, HCMLP GP LLC, but does not look-through to their respective subsidiaries and/or private funds or companies held by private funds.

**Item 5: Remaining investments, notes, and other assets [10]**

<b>Asset (alphabetic sorting, except “Other misc.”)</b>	<b>Description</b>
Breach of contract judgment	Direct asset. Bonded judgment against Highland Capital Management Fund Advisors, LP and NexPoint Advisors, LP, pending appeal.
Contempt civil penalty	Direct asset. Civil penalty owed by Mr. Dondero from the first of two contempt orders against him (his second contempt civil penalty was already received from subsidiary of DAF).
Contingent rights, post-sale	Residual contingent rights tied to milestones from a company that was sold Pre-Petition – direct and indirect interests through managed fund(s).
Highland CLO Funding, Ltd. (“HCLOF”)	Majority-owned by HCMLP or Claimant Trust (directly or indirectly) but controlled by two independent Guernsey-based directors – investments of this entity are predominantly subordinated notes of Acis-managed CLOs, whose remaining value is predominantly cash. Remaining distributions are held up due to litigation against Acis-related entities and HCLOF by Mr. Dondero’s entities.
NHT.U (TSXV exchange)	Direct asset. Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP.
NHT Holdco LLC	Hospitality REIT managed by a subsidiary of NexPoint Advisors, LP. Indirect interests held through a Delaware LLC created for the sole purpose of holding shares of the hospitality REIT. Mr. Dondero is the manager of the entity. HCMLP has demanded shares as provided in the LLC agreement but has yet to receive delivery of the shares.
Note from Hunter Mountain Investment Trust	Direct asset. Defaulted note. Subject to Litigation Trustee collecting.
Note from The Dugaboy Investment Trust (“Dugaboy”)	Direct asset. Term note. Last receipt in December 2022. Next scheduled receipt in December 2023.
Notes from Mr. Dondero + his affiliates (except Dugaboy)	Direct asset. Demand notes and accelerated term notes, plus costs of collection. Subject to Claimant Trust collection litigation.
Post-sale escrows	Residual escrow(s) remaining related to the monetizations of two private companies. Direct and indirect interests through managed fund(s).
Private companies	Direct and indirect interests in two privately held companies.
Private equity fund interests	Direct or indirect interests in two private funds that make Oil & Gas and Healthcare-related investments, respectively.
SE Multifamily Holdings LLC	Direct asset. Membership interests. Subject to Claimant Trust litigation.
Other misc.	Future revenue streams; receivables; misc. investments; cash (unrestricted and reserved); litigation claims of the Litigation Trust; indemnification claims.

[10] Listing is not comprehensive, but rather is intended to capture potentially significant asset categories that have yet to be fully monetized. Listing includes assets of the Claimant Trust, HCMLP (re-organized), Litigation Trust, and HCMLP GP LLC. Descriptions herein indicate whether the asset is directly owned by one or more of these entities and/or whether the asset is indirectly beneficially owned.



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed July 1, 2023

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

-----  
In re: )

) Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )

) Case No. 19-34054-sgj11

Reorganized Debtor. )  
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**ORDER**

**(A) CONTINUING HEARING ON MOTION TO STAY AND TO COMPEL MEDIATION  
[DKT. 3752] AND (B) DIRECTING CERTAIN ACTIONS IN ADVANCE OF CONTINUED  
HEARING**

Having considered (a) the *Motion to Stay and to Compel Mediation* [Docket No. 3752] (the “Motion”) filed by James D. Dondero, The Dugaboy Investment Trust, the Get Good Trust, and Strand Advisors, Inc. (collectively, the “Movants”), (b) the *Objection to Motion to Stay and Motion to Compel Mediation* [Docket No. 3796] (the “Objection”) filed by Highland Capital Management, L.P. and the Highland Claimant Trust (collectively, the “Highland Parties”) (including the

<sup>1</sup> Highland’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

supporting documentation lodged at Docket No. 3797), (c) the *Limited Joinder of Hunter Mountain Investment Trust in, to, and with the Motion to Stay and Motion to Compel Mediation and Incorporated Memorandum in Support [Doc. 3752] to Support Mediation as Sought Therein (Only)* [Docket No. 3862] (the “Limited Joinder”) filed by Hunter Mountain Investment Trust (“HMIT”, and collectively with the Movants and the Highland Parties, the “Parties”), (d) the statements and arguments of counsel regarding the Motion, the Objection, and the Limited Joinder at the hearing on the Motion held before the Court on June 26, 2023 (the “Hearing”), and (e) the record of proceedings in the above-captioned bankruptcy case (the “Bankruptcy Case”) and its related adversary proceedings, the Court finds and concludes that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (iii) good and sufficient cause exists to grant the relief set forth in this Order. Accordingly, it is therefore,

**ORDERED** that the Hearing on the Motion is continued to **Friday, July 21, 2023, at 1:00 p.m. (Central Time)**. The continued Hearing on the Motion will be held via WebEx videoconference; it is further

**ORDERED** that, on or before **Thursday, July 6, 2023, at 9:00 a.m. (Central Time)** (the “Disclosure Deadline”), the Highland Parties shall file with the Clerk of the Court (a) a current balance sheet showing general categories of assets and liabilities of the Highland Claimant Trust and (b) a list of all relevant pending litigation involving and/or affecting the Highland Parties and their current or former officers, directors, employees, affiliates, or other related entities; it is further

**ORDERED** that, on or before **Wednesday, July 19, 2023, at 12:00 p.m. (Central Time)**,

the Dondero Parties<sup>2</sup> shall provide to counsel for the Highland Parties a good faith, written offer of settlement of all pending and prospective litigation involving and/or affecting the Highland Parties (and their current or former officers, directors, employees, affiliates, or other affiliated entities) and the Dondero Parties (and their current and former respective officers, directors, employees, affiliates, or other affiliated entities) (the “Offer”); and it is further

**ORDERED** that if the Offer is not made on behalf of all of the Dondero Parties, then the Highland Parties shall be entitled in their sole discretion to decline to participate in mediation; and it is further

**ORDERED** that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

### End of Order ###

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<sup>2</sup> “Dondero Parties” refers, collectively, to (a) Mr. Dondero, (b) NexPoint Advisors, L.P., (c) Highland Capital Management Fund Advisors, L.P., n/k/a NexPoint Asset Management, L.P., (d) HCRE Partners LLC n/k/a NexPoint Real Estate Partners LLC, (e) Highland Capital Management Services, Inc., (f) Nancy Dondero, and (g) any entity directly or indirectly controlled by, or acting in concert with, Mr. Dondero, including, without limitation, (i) The Charitable DAF Fund, L.P., (ii) CLO HoldCo, Ltd., (iii) The Dugaboy Investment Trust, (iv) Get Good Investment Trust, (v) Hunter Mountain Investment Trust, (vi) NexPoint Strategic Opportunities Fund n/k/a NexPoint Diversified Real Estate, (vii) Highland Income Fund, (viii) Highland Fixed Income Fund, (ix) Highland Global Allocation Fund, (x) NexPoint Capital, Inc., (xi) Strand Advisors, Inc., (xii) The Get Good Non-Exempt Trust 1; (xiii) The Get Good Non-Exempt Trust 2; and (xiv) PCMG Trading Partners XXIII, L.P. and each of their respective successors, assigns, and transferees.



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed August 2, 2023

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

<b>In re:</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
	§	
<b>Reorganized Debtor.</b>	§	

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO STAY  
AND TO COMPEL MEDIATION [DKT. NO. 3752]**

Upon consideration of the *Motion to Stay and to Compel Mediation* [Dkt. No. 3752] (the “Mediation Motion”)<sup>1</sup> filed by James D. Dondero, Strand Advisors, Inc., The Dugaboy Investment Trust, and Get Good Trust (collectively, the “Dondero Parties”) in the above-captioned chapter 11 case; (a) the arguments and evidence in support of the Mediation Motion (including the *Declaration of Davor Rukavina in Support of the Dondero Defendants’ Motion to Stay and Compel Mediation* [Dkt. 3753]; (b) the *Highland Parties’ Objection to Motion to Stay and Motion to Compel Mediation* [Dkt. 3796] (the “Objection”) filed by Highland Capital Management, L.P. and

<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Mediation Motion.

Highland Claimant Trust (together, the “Highland Parties”); (c) the arguments and evidence in support of the Objection (including the *Declaration of John A. Morris in Support of Highland Parties’ Objection to Motion to Stay and Motion to Compel Mediation* and the exhibits annexed thereto) [Dkt. 3797]; (d) the *Limited Joinder of Hunter Mountain Investment Trust In, the Motion to Stay and Motion to Compel Mediation and Incorporated Memorandum in Support [Doc. 3752] to Support Mediation as Sought Therein* [Dkt. 3862]; (e) the arguments and presentations made during hearings conducted on June 26, 2023, and July 21, 2023; and (f) the balance sheet and list of active litigation (as amended) filed by the Highland Parties [Dkt. 3872, 3873, and 3880, respectively] in accordance with this Court’s instructions; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the legal, equitable, and factual bases set forth in the Mediation Motion establish sufficient cause only for the relief specifically granted herein; and adequate notice of the Motion having been given; it is hereby **ORDERED** that:

1. The parties identified on **Exhibit A** annexed hereto (each, a “Party” and collectively, the “Parties”) are directed to participate in a mediation (the “Mediation”) to be conducted by former Judge Layn Phillips and Mr. Greg Danilow of Phillips ADR Enterprises, P.C. (together, the “Mediator”) pursuant to the terms of this Order. Each Party shall designate a client representative with authority to settle on behalf of the respective Party and who will attend the Mediation and must continue participating in the Mediation as requested by the Mediator.

2. Subject to the terms of this Order, the Mediator shall determine the structure of the Mediation and which Parties should be invited or required to participate in any particular

Mediation session depending upon the content of such session. The Parties acknowledge that the Mediator may have *ex parte* communications with one or more Parties prior to or during the course of the Mediation.

3. The Dondero Parties, on the one hand, and the Highland Parties, on the other hand, shall each timely pay one-half of the costs and expenses related to the Mediator and the Mediation as and when required by the Mediator.

4. Each of the Parties and their client representatives will participate in the Mediation in good faith.

5. The Mediator may request information from any Party but cannot compel any Party to provide any information.

6. The Mediation shall be completed within 90 days of the entry of this Order. Within five (5) business days after the conclusion of the Mediation, the Mediator will file a report with the Court stating only whether a settlement, in whole or in part, has been reached (the “Report”).

7. The following matters shall be stayed (collectively, the “Stayed Matters”) until the Mediator files his Report:

- Highland Capital Management L.P.’s *Motion for (A) Bad Faith Finding and (B) Attorneys’ Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRC Partners, LLC) in Connection with Proof of Claim 146* [Dkt. 3851];
- The Dugaboy Investment Trust’s (“Dugaboy”) and HMIT’s *Complaint to (I) Compel Disclosures about the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs’ Interests in the Claimant Trust* [Adv. Pro. No. 23-03038, Dkt. 1]; and
- Dugaboy’s *Motion to Preserve Evidence and Compel Forensic Imaging of James P. Seery, Jr.’s iPhone* [Dkt. 3802].

8. Unless the Parties jointly otherwise agree in writing, other than the Stayed Matters, no other contested matter, motion, adversary proceeding, action, or proceeding in this or any other

court shall be stayed or suspended as a result of this Order. Unless the Parties jointly agree in writing, this Order shall not be (a) filed with, or disclosed to, any court other than the this Court; or (b) used or relied upon by any Party to seek a stay, suspension, or delay of any litigation pending outside of the this Court.

9. If the Mediation does not result in the dismissal with prejudice of any of the Stayed Matters, then counsel for the Parties in each applicable Stayed Matter shall (a) confer in good faith to adopt a new scheduling order, and (b) if they are unable to jointly adopt a new scheduling order, seek a status conference with the Court to be conducted within 14 days of the Mediator's filing of the Report or as soon thereafter as this Court is available.

10. Regardless of the outcome of the Mediation, it is the order of this Court that the contents of the Mediation, including any statements or representations made by the Mediator, any Party, or any client representative (or attorney or agent of a client representative), agent, or attorney of a Party during the course of the Mediation, are confidential and privileged. Unless permitted or required by applicable law, none of the Parties, their client representatives (or attorney or agent of a client representative), agents, or attorneys, or the Mediator, may reveal such information to any non-party or to any court, including, without limitation, in any pleadings or submissions, and none may be examined in any judicial or administrative proceeding (or any discovery relating to such a proceeding) regarding anything they may have said, seen, or heard during the course of the Mediation. No term sheet or other document or draft thereof prepared in the course of the Mediation will ever be the subject of discovery nor will such documents ever be admissible at any trial. "In the course of the mediation" includes the Mediation sessions themselves, as well as materials submitted to the Mediator in advance of or during the Mediation, verbal or written communications with the Mediator (or including the Mediator) before or after the Mediation

sessions, and communications among the Parties specifically denominated as “in the course of mediation” and memorialized as such via electronic mail or otherwise among the Parties contemporaneously or in advance of that communication. Without limiting any provision of this Order, all communications occurring, and information exchanged, in the course of the Mediation will be entitled to all protections applicable under Federal Rule of Evidence 408 or any other protections afforded to settlement and compromise communications under other applicable law.

11. Except as specifically set forth herein, all relief requested in the Mediation Motion is **DENIED**.

12. The Court shall retain jurisdiction to hear and determine all matters and disputes arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

**AGREED AS TO FORM:**

/s/ Amy L Ruhland  
Amy L. Ruhland  
*Counsel to the Dondero Parties*

/s/ John A Morris  
John A. Morris  
*Counsel to the Highland Parties*

/s/ Deborah Deitsch-Perez  
Deborah Deitsch-Perez  
*Counsel to Limited Joiner, Hunter  
Mountain Investment Trust*

**EXHIBIT A: Mediation Parties**

<b>Alleged Dondero-Related Parties (“Dondero Parties”)</b>
Charitable DAF Fund, L.P.
Charitable DAF Holdco, Ltd.
CLO HoldCo Ltd.
Dondero, James (“Dondero”)
Dondero, Nancy
Ellington, Scott
Get Good Non-Exempt Trust 1
Get Good Non-Exempt Trust 2
Highland Capital Management Fund Advisors, L.P.
Highland Dallas Foundation
Highland Fixed Income Fund
Highland Global Allocation Fund
Highland Income Fund
Hunter Mountain Investment Trust
Leventon, Isaac
Mark & Pamela Okada Family Trust – Exempt Trust #1
Mark & Pamela Okada Family Trust – Exempt Trust #2
NexPoint Advisors, L.P.
NexPoint Capital, Inc.
NexPoint Diversified Real Estate Trust (f/k/a NexPoint Strategic Opportunities Fund)
NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC)
Okada, Mark
PCMG Trading Partners XXIII, L.P.
Rand PE Fund I, LP
Scott, Grant
SE Multifamily Holdings LLC
Strand Advisors, Inc.
The Dugaboy Investment Trust

<b>Highland-Related Parties (“Highland Parties”)</b>
Dubel, John
Farallon Capital Management
HCMLPGP LLC
Highland Capital Management, L.P.
Highland Claimant Trust
Highland Indemnity Trust
Highland Litigation Sub-Trust
Jessup Holdings
Kirschner, Marc S., as Trustee of the Litigation Sub-Trust

Muck Holdings
Nelms, Russell
Seery, James P. ("Seery")
Stonehill Capital Management

**STINSON LLP**

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*Attorneys for Hunter Mountain Investment Trust*

**REICHMAN JORGENSEN LEHMAN & FELDBERG**

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*Attorneys for James D. Dondero, Strand  
Advisors, Inc., Dugaboy Investment Trust,  
and Get Good Trust*

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

Debtor.

Chapter 11

Case N. 19-34054 (SGJ)

**JOINT NOTICE OF MEDIATION REPORT**

**PLEASE TAKE NOTICE** that, pursuant to the Court’s Order (Dkt. No. 3897) entered August 2, 2023, the Parties herby jointly submit the Mediation Report attached hereto as Exhibit A.

Dated: November 7, 2023

Respectfully Submitted,

STINSON LLP

By: /s/ Deborah Deitsch-Perez  
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Michael P. Aigen  
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Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

*Attorneys for Hunter Mountain Investment Trust*

REICHMAN JORGENSEN LEHMAN &  
FELDBERG

/s/ Amy L. Ruhland  
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*Attorneys for James D. Dondero, Strand  
Advisors, Inc., The Dugaboy Investment Trust,  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 7, 2023, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez

# EXHIBIT A

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

<b>In re:</b>	§	<b>Case No. 19-34054-sgj11</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Chapter 11</b>
	§	
<b>Reorganized Debtor.</b>	§	

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**MEDIATION REPORT**

Hon. Layn R. Phillips (Fmr.) and Greg Danilow, Esq., of Phillips ADR Enterprises, P.C., the Mediators appointed by the Court pursuant to an Order dated August 2, 2023, hereby report that following two days of in-person mediation and a number of follow up calls thereafter, no settlement, in whole or in part, was reached.

Date: November 6, 2023

Respectfully Submitted,  
PHILLIPS ADR ENTERPRISES, P.C.

*/s/ Hon. Layn R. Phillips (Fmr.)*  
\_\_\_\_\_  
Hon. Layn R. Phillips (Fmr.)

*/s/ Greg Danilow, Esq.*  
\_\_\_\_\_  
Greg Danilow, Esq.

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